TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 195.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

STATE INVESTMENT COMPANY AND EDWARD B. WHEELER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 4, 1924.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, , of said court, before the Honorable Robert E. Lewis and the orable William S. Kenyon, Circuit Judges, and the Honorable nk A. Youmans, District Judge.

test:

EAL.]

E. E. KOCH,
Clerk of the United States Circuit
Court of Appeals for the Eighth Circuit.

e it remembered that heretofore, to wit, on the tenth day of , A. D. 1922, a transcript of record pursuant to an appeal allowed he District Court of the United States for the District of New ico, was filed in the office of the clerk of the United States Cir- Court of Appeals for the Eighth Circuit, in a certain cause rein the United States of America was appellant and the State stment Company et al. were appellees, which said transcript as ared and printed under the rules of the United States Circuit t of Appeals for the Eighth Circuit, under the supervision of erk, is in the words and figures following, to wit:

(Citation and Acknowledgment of Service.)

In the District Court of the United States
For the District of New Mexico.

United States of America,
Plaintiff,
vs.
The State Investment Company
and
Edward B. Wheeler,
Defendants.
No. 605 Equity.

United States of America: SS

The President of the United States to the State Investment Company and Edward B. Wheeler, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Eighth Circuit, to be held at the City of St. Louis, in the State of Missouri, within sixty days from and after the date hereof, pursuant to an order allowing an appeal of record in the Clerk's office of the United States District Court for the District of New Mexico, wherein the United States of America is appellant, and the State Investment Company and Edward B. Wheeler are appellees, to show cause, if any there be, why the decree entered in said cause on November 4, 1921, as in said order allowing the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Colin Neblett, United States District Judge for the District of New Mexico, this 8th day of April 1922, in the year of Our Lord One thousand nine hundred and twenty-two, and the Independence of the United States of America, the one hundred and forty-sixth.

COLIN NEBLETT,
District Judge.

Service of the above citation is hereby acknowledged this 20th day of April, 1922, for and on behalf of the defendants and appellees.

S. B. DAVIS, JR.
A. T. ROGERS, JR. & C. W. G. WARD
[Solicitor] for Defendants and Appellees.

3 Be It Remembered, that on the 16th day of January, 1918, there was filed in the office of the Clerk of the District Court of the United States for the District of New Mexico, in cause No. 605 Equity on the civil docket of said court, wherein the United States of America was plaintiff, and The State Investment Company and Edward B. Wheeler, were defendants, a complaint in words and figures as follows, to-wit:

(Complaint.)

(Filed in the U. S. District Court on January 16, 1918.)

The United States of America, plaintiff, by Summers Burkhart, United States Attorney for the District of New Mexico, acting under the direction of the Attorney General of the United States, brings this bill of complaint against The State Investment Company and Edward B. Wheeler, defendants, and for cause of action states:

I.

That The State Investment Company is a corporation organized and existing under the laws of the State of New Mexico, and Edward B. Wheeler is a citizen and resident of the State of New Mexico.

II.

That the defendants, as plaintiff is informed and believes, claim some title or interest to or in that certain private land claim known as and called the Mora Grant, and situate in the Counties of Mora, Taos and San Miguel, State of New Mexico, which said Mora Grant was on July 9, 1859, recommended for confirmation by the then Surveyor General of New Mexico, acting pursuant to the Act of July 22, 1854, (10 Stat., 308) and which said Mora Grant was confirmed by Section Three of the Act of June 21, 1860, (12 Stat., 71), as number thirty-two. Thereafter, on July 4, 1861, the then Surveyor General of New Mexico entered into a contract with one Thomas Means for the survey of the said Mora Grant;
4 and thereafter field notes and plat of survey of said Mora Grant by said Thomas Means were returned and filed in the office of the Surveyor General for New Mexico, which field notes and plat returned as aforesaid were approved by the Surveyor General of New Mexico; and on August 15, 1876, the patent of the United States was issued for said Mora Grant in accordance with the aforesaid field notes and plat of the survey of the said Thomas Means.

III.

That the west boundary of said Mora Grant, confirmed and patented as aforesaid, is a line beginning at a point on the north bank of the Sapello River two miles and thirty (30) chains west of the northwest corner of the Las Vegas Grant as established by Frank M. Johnson in his survey of the said Las Vegas Grant in the years 1899 and 1900, which said survey was approved by the Surveyor General of New Mexico on January 23, 1901, and running thence north a distance of thirty-one (31) miles and sixty-five (65) chains to a point of intersection with the north boundary of said Mora Grant, said line intersecting the north boundary of Township nineteen (19) North of Range fourteen (14) East, New Mexico Principal Meridian, as surveyed by Taylor and Holland in December 1882 and approved by the Surveyor General of New Mexico on February 7, 1883, at a point seventy-two (72) chains and fifty (50) links east of the corner between sections two (2) and three (3) on said township boundary, said line constituting the west boundary of the Mora Grant as aforesaid [begin] more fully described in the plat and field notes of a survey thereof executed by Alonzo E. Compton in August and September, 1909, and approved by the Surveyor General of New Mexico on March 21, 1911.

IV.

That immediately west of and adjacent to the aforesaid west boundary of the Mora Grant are situated large areas of the public lands of the plaintiff, which said public lands are withdrawn and set aside as a part of the Santa Fe National Forest, the east boundary of said National Forest being coincident with the west boundary of said Mora Grant; and said public lands of the plaintiff west of the aforesaid west boundary of the Mora Grant are in the possession of the plaintiff and administered and controlled by it as a part of the aforesaid National [Forst].

V.

That the defendants herein dispute the correctness of the aforesaid location of the west boundary of the Mora Grant; and said defendants have asserted, and they are now asserting, that the true location of the west boundary of said Grant is a line three (3) miles and forty and ninety-four one hundredths (40.94) chains west of and parallel with the aforesaid line; and said defendants have asserted, and they are now asserting, that a large area, embracing more than forty thousand (40,000) acres of the aforesaid public lands of the

plaintiff situated immediately west of and adjacent to the west boundary of said Mora Grant as described in paragraph III hereof, and in the possession of the plaintiff, and controlled and administered by it as a part of the Santa Fe National Forest as aforesaid, is in fact a part of the said Mora Grant and the private property of said defendants; the said tract of the public lands of the plaintiff claimed by the defendants as aforesaid being bounded as follows, to-wit:

On the east by the line described in paragraph III hereof as the west boundary of the Mora Grant, being the line surveyed by Alonzo E. Compton as aforesaid, on the south by the Sapello River, on the west by a line beginning at a point on the north bank of the Sapello River five (5) miles and seventy and ninety-four one hundredths (70.94) chains west of the northwest corner of the Las Vegas Grant as established by Frank M. Johnson in his survey of the said Las Vegas Grant in the years 1899 and 1900 and which survey was approved by the Surveyor General of New Mexico January 23, 1901, and running thence north to a point of intersection with the southeast boundary of the Rancho del Rio Grande Grant, and on the north by the said southeast boundary of the
6 Ranchos del Rio Grande Grant; and said defendants have heretofore trespassed and are now threatening to trespass upon lands embraced within the area of the said Santa Fe National Forest and have heretofore threatened and are now threatening to prevent purchasers of timber from and permittees of the plaintiff from carrying out their contracts with the plaintiff and from exercising their privileges on the area described as aforesaid, thereby greatly hampering the plaintiff in its administration of said area as a part of the said Santa Fe National Forest in accordance with the laws governing the National forests of the United States; and are otherwise continually interfering with, trespassing upon, and asserting title to the said lands of the said plaintiff.

VI.

That the aforesaid claims of the defendants are without any right whatsoever; and said defendants have no claim or right whatsoever to the area claimed by them as aforesaid or to any part thereof, or to any land lying west of the west boundary of the Mora Grant located as described in paragraph III hereof, and as surveyed by Alonzo E. Compton as aforesaid.

Wherefore, plaintiff prays that said defendants be required to submit to this court any and all claims of title they, or either of them, may have under the said Mora Grant to any

land lying west of the west boundary of said Grant located as described in paragraph III hereof, and as surveyed by Alonzo E. Compton as aforesaid; that the defendants' claim of title under said Mora Grant to any land lying west of said west boundary of said Mora Grant be declared null and void; that plaintiff's title to all of said lands be quieted as against any and all claims under the Mora Grant as aforesaid; that the defendants be perpetually enjoined from claiming title under said Mora Grant to any of the land claimed by them as described in paragraph V hereof, and from interfering or threatening to interfere in any manner whatsoever with the contractors with and permittees of the plaintiff on said area, and from interfering with, trespassing upon and as-
7 serting title to the said lands of the said plaintiff; and for such other and further relief in the premises as equity may require and to this court may seem meet.

S. BURKHART,
United States Attorney
J. O. SETH,
Assistant United States Attorney.

(Answer, filed January 26, 1918.)

Come now The State Investment Company and Edward B. Wheeler, defendants in the above entitled cause, and for answer to the complaint in said cause state:

1. They admit the allegations contained in the first paragraph of said complaint.

2. They admit the allegations contained in the second paragraph of said complaint.

3. They deny the allegations contained in the third paragraph of said complaint.

4. Answering the fourth paragraph of said complaint they admit that the east boundary of the Santa Fe National Forest is coincident with the west boundary of the Mora Grant and admit that west of said west boundary there are large areas of the public lands of plaintiff which are possessed, administered and controlled as in said paragraph set out, but they deny that the west boundary of said Mora Grant is located at the place alleged by plaintiff.

5. Answering paragraph 5 of said complaint the defendants admit that they dispute the correctness of the location of the west boundary of the Mora Grant as alleged by plaintiff, and admit that they are asserting that the true location

of the west boundary of said grant is a considerable
8 distance to the west of the said line alleged by plaintiff to be the true boundary, but whether the distance between said two lines is as stated in said paragraph five these defendants do not know; they admit that they have asserted and do now assert that a large area of land lying to the west of and adjacent to the west boundary of said Mora Grant as claimed by plaintiff is in fact a part of the said Mora Grant and is the private property of these defendants, as is alleged in said paragraph five, but they deny that the lands so claimed by them are correctly described in said paragraph five and allege that the true description of the lands so claimed by them is as set out in paragraph twelve of the second defense contained in this answer, which is hereby referred to for a correct description thereof. They deny that they are trespassing upon the said lands or in any way interfering with the control thereof by plaintiff as is alleged in said paragraph five, but admit that they would do so were it not for a stipulation entered into between the parties to this cause by virtue of which they have agreed that the administration of said disputed lands shall be left with plaintiff during the pendency of this suit.

6. They deny the allegations contained in paragraph six of said complaint.

And for another and further defense these defendants state:

1. That on the 28th day of September, 1835, Albino Perez, then political chief of the then territory of New Mexico, made a grant of certain lands, now commonly known as the Mora Grant, and that juridical possession of said grant was duly given to the grantees thereof on the 20th day of October, 1835.

2. That the western boundary of the land conveyed by the grant aforesaid was a place known as the Estillero, and that by the act of juridical possession aforesaid the grantees under said grant were placed in possession of the said tract of land with the Estillero as its west boundary, the said tract of land so granted and of which juridical possession was given as aforesaid being bounded and described as follows, namely:

On the north the Ocate River;
9 On the south to where the Sapello empties;
On the east the Aguaje de la Llegua; and

On the west the Estillero.

3. That about the year 1859 there was presented to the Surveyor General of the United States for the Territory of New Mexico a petition on behalf of the then claimants of the said grant asking the confirmation of their claim to said grant and in said petition the said grant was described with the same boundaries as are set out in the preceding paragraph hereof, the west boundary being stated to be the Estillero.

4. That thereafter on the 9th day of July, 1859, the Surveyor General of the Territory of New Mexico having investigated the said grant and having taken testimony as to the validity thereof found that the same was a good and valid grant and that the lands embraced within the metes and bounds set forth in the said act of juridical possession, as alleged in paragraph two hereof, was severed from the public domain; and ordered that the said grant be transmitted to the Congress of the United States with the request that it be confirmed to the original grantees and those claiming under, through or from them.

5. That on the 21st day of June, 1860, the Congress of the United States passed an act entitled "An Act to Confirm Certain Private Land Claims in the Territory of New Mexico", said act appearing in volume 12 of the Statutes at Large of the United States, at page 71, and being hereby referred to, whereby the Congress of the United States confirmed the title to the said Mora Grant "as recommended for confirmation by the Surveyor General"; and defendants allege that under and by virtue of the act of confirmation aforesaid the title of the grantees of the Mora Grant became and was vested and that the west boundary of the said grant thereby became fixed and established as being at the Estillero.

6. That the Estillero is a place in the valley of the Rio Pueblo a short distance south of the Angustura del Caballo, said place being more definitely fixed by certain monuments as is hereinafter more fully set out.

7. That thereafter in the year 1861, as is alleged in paragraph two of plaintiff's complaint, the surveyor General of New Mexico entered into a contract with one Thomas Means for the survey of the said Mora Grant; that it became necessary for the said Thomas Means to ascertain the location of the Estillero, for the purpose of determining the west boundary of the said Mora Grant, and that the said Thomas Means did ascertain and determine that its location was as stated in the preceding paragraph hereof; and thereupon

the said Thomas Means erected at the said place certain monuments, namely, a stone marked on the east side W B M G for the west boundary of the Mora Grant, and on the west side E O for Estillero, and around this stone he made a mound of stones all for the purpose of establishing and marking the west boundary of the Mora Grant; that to the north of said principal stone he set a second stone marked W B M G in a mound of stones, the same standing at the base of a high rough mountain; that the said principal stone was set a few chains to the north of the trail to Picuris and about 18.18 chains to the north of the River Pueblo; and at a distance of approximately 34.50 chains south of the said principal stone the said Thomas Means set a third stone marked W B M G in a mound of stones as a point on the west boundary of said Mora Grant; all of which was fully recited and set out by the said Thomas Means in his field notes of his said survey filed by him with the Surveyor General of New Mexico, and still on file in said office, and which are hereby referred to.

8. That the said field notes of the survey aforesaid made by the said Thomas Means were thereafter [dully] approved by the Surveyor General of New Mexico and on the 15th day of August, 1876, a patent was duly issued by the United States for the said Mora Grant to the original grantees
11 thereof in accordance with the aforesaid field notes and survey of the said Thomas Means, which said patent is recorded in Book 4, page 186 to 227 inclusive, of the Records of Mora County, New Mexico, and is hereby referred to and made a part hereof.

9. That the said Thomas Means in making the survey aforesaid did not establish any monument at the northwest corner of said grant, nor did he in any way mark the said northwest corner on the surface of the ground, nor did he go to the said northwest corner, he reporting that the same was inaccessible in the mountains, and the northwest corner of said grant as described by him in said field notes was fixed only by means of calculations and computations from other lines; and in the patent aforesaid the west boundary of the said Mora Grant is described as follows, running from the location of the northwest corner as so calculated, namely:

> Thence south from said point for northwest corner; at thirteen miles seven chains forty-one links on course, or one hundred and three miles forty three chains sixty nine links from beginning, a stone thirty by nineteen by seven inches in size in large mound of stones and marked W B M G and on west side E o, from which mound an aspen tree twelve inches in diameter bears north

seventy-four and one-half degrees east one hundred and seventy links distant, which tree bears cut in it the letters W. B. M. G. and the word Estillero, and from which mound a pine tree seventeen inches diameter bears north three hundred and seventy-one links distant, and which tree bears cut in it on the east side the letters W B M G and the word Estillero, and at the east side of which tree is a stone twenty by twelve by three inches in size in a mound of stones and marked W. B. M. G.; at thirteen miles nine chains seventy-one links a trail to Picuris, bearing northwest; at thirteen miles twenty-five chains fifty-nine links the Pueblo River bearing northwest and southeast; at thirteen miles forty-one chains ninety-one links at foot of high mountain a stone eighteen by twelve by five inches in size in a mound of stones and marked W B M G; at thirty three miles thirty-three chains twenty-nine links on course, or one hundred and twenty-three miles sixty nine chains fifty-seven links from beginning, southwest corner of the Mora Grant, a stone twenty by fourteen by six inches in size in a mound of stones and marked SWCMG and standing on the edge of a high mountain on left bank of the Sapello River one hundred and fifty-two links north of the stream.

10. That under and by virtue of the survey, field notes and patent aforesaid the west boundary of the said Mora Grant is a line drawn north and south through the said principal stone erected by the said Thomas Means at the Estillero to intersect the Sapello River on the south and the north boundary of the Mora Grant on the north.

11. That the line claimed by plaintiff [be] be the west boundary of the Mora grant, as described in plaintiff's complaint, does not strike or intersect the Estillero, nor the Pueblo river, nor any of the monuments aforesaid called for in said patent, but runs several miles to the east thereof.

12. The defendants are the owners in fee simple of all and singular that certain tract of land bounded as follows:

On the north by the south boundary line of the Ranchos del Rio Grande Grant (the true north boundary of the Mora Grant lying north of the south boundary of the [Rachos] del Rio Grande Grant, but the portion in conflict between said two grants not being involved herein), on the west by the line described in the preceding paragraph hereof, on the east by the so-called Compton survey on the west boundary of the Mora Grant, as set out in plaintiff's complaint, and on the south by the Sapello River;

the defendant The State Investment Company being the owner in fee simple of all that portion of said tract lying to the north of the fifth correction line, and the defendant Edward B. Wheeler, being the owner of all that portion of said tract lying to the south of said fifth correction line.

Wherefore defendants ask:

1st. That the relief prayed for by plaintiff in this case be denied;

2nd. That the defendant The State Investment Company be decreed to be the owner of all that portion of the tract of land in this answer described lying north of the fifth correction line, and that the defendant Edward B. Wheeler be decreed to be the owner of all that portion of said land lying south of the fifth correction line, and that plaintiff be decreed to have no right, title or interest therein or thereto;

3rd That by proper decree of this court the title of defendants in and to said lands may be quieted and set at rest as against any adverse claim thereto of plaintiff;

4th For such other and further relief as to the court may seem meet and proper in the premises.

A. T. ROGERS, JR.,
S. B. DAVIS, JR.,
C. W. G. WARD,
East Las Vegas, New Mexico.
Attorneys for Defendants.

State of New Mexico, } ss:
County of San Miguel }

T. W. La Rue being first duly sworn deposes and says: That he is the vice-president of The State Investment Company, one of the defendants in the above entitled cause, and makes this affidavit on its behalf; that he has read the foregoing answer and knows the contents thereof and that
14 the same is true of his own knowledge.

T. W. LaRUE,

Subscribed and sworn to before me this 24th day of January, 1918.

KATHERINE G. SULLIVAN
Notary Public.

My commission expires
January 12, 1920.
(Notarial Seal)

(Statement of the evidence, filed April 28, 1922.)

On trial of this cause the following stipulation was made and read into the record:

(Stipulation as to lands mentioned in complaint, etc.)

It is hereby stipulated by and between the United States of America and E. B. Wheeler and the State Investment Company, defendants acting by and through their respective attorneys of record, that it shall not be necessary for either of the said defendants to introduce evidence to show their ownership of the lands within what is known as the Mora Grant, it being now stipulated and agreed that if the United States does not have title to the lands described in its complaint in this case then title to that portion thereof lying north of the Fifth Correction line is vested in the defendant, the State Investment Company and title to that portion lying south of said correction line is vested in the defendant, E. B. Wheeler.

This stipulation being subject to the written stipulation between the parties to this cause, already on file.

It is further stipulated that Thomas Means, who made the survey of the Grant on which the patent is based is now dead, and that the chainmen, who accompanied him in the making of that survey, are also now dead, those named in his notes.

---

15 FRANK M. JOHNSON, a witness called for the plaintiff, testified as follows:

He was appointed a United States Surveyor in 1895, transferred to the General Land Office in 1899. From 1899 to 1905, he was an Examiner of Surveys. He resigned in 1905 and went into private practice in Cheyenne, Wyoming, where he was employed in making public land surveys under contracts. In 1910, when the contract system of public land surveys was abolished, he was made Supervisor of Surveys, which office he has since held.

In 1899, he was directed by the Commissioner of the General Land Office to make a survey of the west boundary of the Las Vegas Grant, based on the Pelham-Clements Survey of 1860. He made the survey as directed and found about 11 or 12 of the 24 corners which had been set by the Pelham Clements Survey on the west boundary. These were identified by the old stones, old bearing trees and topography. He was unable to find the northwest corner, but after considerable search, he first found the five mile corner, and from

[thereon] he found fully 50% of the old corners. The week before the trial he went to the northwest corner and found the one-mile corner with the old corner, still setting along side of it; also the northeast bearing tree which is the same.

The old monument at the one mile corner is a stone about ten inches wide and 2 or 3 inches thick. It is set endwise north and south with X. Pelham-Clements reported the corner particularly. He found it marked with a little fishhook at the top. It was witnessed by two bearing trees. The northwest tree was rather old, old pine tree, which had been cut off four feet up; the old blaze was on it. The northeast tree was not standing but by digging down he found the remains of a tree having been there. He unquestionably identified this corner as one of Pelham-Clements.

From the one mile corner he ran due north 80 chains which took him 60 links into the bottom of the Sapello
16 River, but not into the stream itself of the Sapello River which is the boundary. He decided to leave the corner at 80 chains north of the one mile corner, as there was an old cut off of the Sapello River which looked like an old bed. This was 1 mile 290 links north of the one mile corner. There was the remains of an old oak tree which answered quite closely to the bearing tree given by Pelham-Clements' field notes. It is just a mile north of the one mile corner.

In identifying the old corner of the Pelham-Clements' survey he found the bearing trees compared well. Pelham-Clements' survey was very well executed considering the time it was made. There were no great discrepancies except in two places. There was one in the west boundary where by following their course north for 48 chains, as stated by them, it would have taken him up on the mountain while they reported the course along the creek, 28 chains took him to the bank of the creek; so he assumed the distance to be 28 chains instead of 48. Also in the western boundary, he found the distance from the Sapello River to the first meander corner to be 4 miles 14 chains, while Pelham-Clements reported the distance to be 3 miles 70 chains.

In the year following, 1910, he was sent back to run the south, east and north boundaries of the Las Vegas grant. He meandered the Sapello River west to the northwest corner and made out 45 of the Pelham-Clements corners.

On cross examination witness stated that the northern boundary of the Las Vegas Grant as stated in the original grant and in the Pelham and Clements survey was the Sapello River; the actual distance from the one mile stone he

found to the Sapello river was two chains, and possibly eighty links to the main stream itself, about ninety links to the cut-off stream. He found several errors in the Pelham and Clements survey, one being forty-eight chains,
17 which witness ran as twenty-eight chains. He was meandering the Tres Hermanos Creek along the bottom of the creek. The forty-eight chains called for would have taken him to the top of the mountain so he took twenty-eight chains, which brought him to the line of corners. It is not unusual to find errors of that kind in these old grant surveys. It is quite common. [It] retracing lines of this character, just as he did in this instance, changes are made to conform to the topography. He was trying to find the old corners of the boundary rather than strictly follow the Palham and Clements survey.

OWEN L. WOOD, called as a witness for the plaintiff, testified as follows.

He is draftsman in the Surveyor-General's office, where he has been employed for nine years. He was also employed for almost a year at the Phoenix office, and for 18 months in the office at Reno, Nevada. He graduated at Rose Technical College, Terre Haute, Indiana. His duties consist of making plats and maps of public lands. (Plaintiff offers plat made by witness, showing the boundaries of the Mora Grant as platted from the notes given in the patent. Plat marked Plaintiff's Exhibit 25.

The heavy black line around the entire figure represents Means' survey ma'e from his notes as given in the patent. The plat was prepared by beginning at the southeast corner of the grant and proceeding thence to the northeast corner. The dotted line beginning at meander corner 13 shows meanders of the west boundary accurately platted from the field notes of the Means survey made in 1861. The faint line on the south, ending at the northwest corner of the Las Vegas Grant represents Johnson's retracement of the north boundary of the grant and Compton's survey and retracement. The faint line on the north from the northeast to the northwest represents the Compton survey of these boundaries. The line from the northwest corner represents Compton's survey of the west boundary. The dotted line to the extreme west shows the survey made for the west boundary by John H. Walker. The line on the northwest is a portion of the east boundary of the Rio Grande Grant.

18 On cross examination, this witness testified that it was about one mile and 12 chains from the Means' line on

the north down to Compton's line west of meander corner 13. The distance between Means' and Compton's meander corner 13 is 142 chains. On direct examination this witness testified that The east and west distance between the two points is about one mile, 25 chains. The north and south distance between the Compton starting point and the southwest corner of the grant is 39 chains 50 links, according to the patented field notes.

HENRY C. HAMILL: a witness, for the plaintiff, testified as follows:

He is the Chief draftsman in the Surveyor-General's office at Santa Fe, New Mexico, having been in the office for 15 years. He graduated at Sheffield Scientific School. His duties are to make plats from field notes.

Witness has computed the calls of the patent and of the Means Survey, Compton's retracements and survey, also Johnson's retracement of the north boundary of the [Last] Vegas grant, and finds the distances to be as follows:

North Boundary Mora Grant.

East and west distance from NE corner to MC 13 by the Means Survey and the patent, 2224.94 chains. Distance west of MC 13 to point for NW corner (calculated) by Means, and as carried into the patent, 840.54 chs. Total east and west distance from NE corner to NW corner by the Means survey and by the patent, 3065.48 chs.

East and west distance from NE corner to Compton's MC 13, according to Compton's retracements, 2319.65 chs. East and west distance from Compton's MC 13 to his NW corner, according to his survey, 720.66 chs. Total east and west distance NE corner to NW corner by Compton's retracements and survey, 3040.31 chs.

South Boundary Mora Grant.

East and west distance from Se corner of Mora Grant to NW corner of Las Vegas grant, 2915 chs. according to
19 Pelham and Clements. East and West distance by the Means survey and the patent, from the NW corner of Las Vegas grant to his SW corner of Mora grant, 163.10 chs. Total east and west distance from the SE corner Mora grant to the Sw corner, according to patent and the Means survey, 3079.07 chs.

East and west distance from the SE corner Mora Grant to the NW corner Las Vegas grant, according to Johnson's retracement of a part of the east boundary and the north boundary of the Las Vegas grant, 2877.87 chs. East and west distance from Johnson's reestablished NW corner of Las Vegas grant to Compton's SW corner Mora Grant, from the notes of Compton's retracement survey, 199.55 chs. Total east and west distance from the SE corner to the SW corner, according to Johnson's and Compton's retracement surveys, 3077.42 chs.

Witness has also computed the Means' traverse from meander corner 13 on the north boundary down through upper Mora, to his Estillero, and the lines close. His traverse from Estillero to his SW corner also closes. He computed the Means' whole survey of the grant and it closes, witness might say it closes almost miraculously. The surveys made of the Mora Grant by Compton and Johnson also close.

ALONZO E. COMPTON, witness for the plaintiff, testified as follows:

He is Assistant Supervisor of surveys in the General Land Office, having held that office for five years. He is located in New Mexico. He took a degree in Civil Engineer at the University of Indiana in 1891. He worked as a surveyor in Illinois for 8 years, from 1895 to 1903. He entered the Government service as deputy surveyor about 1906. In 1910, he was employed as a surveyor by the Government and served in that capacity until he received his present employment. Since entering the Government service he has been almost continuously employed making surveys. In 1909, he made a survey of the west and a portion of the north boundary of Mora grant. Witness refers to his field notes and finds that the survey was commenced August 27 and ended September 18, 1909. The initial point of the survey was a stone 18x12x5 inches near the north bank of the Sapello River.

The east and west distance between that stone and the north west corner of the Las Vegas grant, as re-established by Johnson, is 199 chains, 55 links, based upon actual measurement. He found the northwest corner of the Las Vegas grant as re-established by Johnson. He had recently measured the distance when the corner was pointed out as re-established by Mr. Johnson. It is a sandstone 24x14x8 inches above the ground. He found the witness trees to this corner. From this corner it was 270 links to the channel of the

Sapello River. The Northwest corner of the Las Vegas grant is 199 chains, 55 links east, and 73 chains, 16 links south of the southwest corner of the Mora grant, from which he made a survey of the west boundary of that grant.

In making his survey in 1909, he ran north on a random line from his initial stone which he accepted as the southwest corner for about 7 miles to several old corners of the public land surveys which purported to close on the west boundary of the grant. He then returned to the stone 18x12x5 inches above the ground, which he accepted as the southwest corner of the Mora grant, and noted that it was 75 links north of the water's edge of the Sapello River. It was 9 links from Theo Heman's gate post. He says he marked two witness trees but describes four witness trees to this corner and then ran north three degrees, 8 minutes west, and 8.95 chains intersected the closing corner of Sections 2 and 11, Township 18 North, Range 14 East. He remembers that the corners were marked as described by the surveyor-General in the official records, a copy of which he had with him. From the point marking this closing corner, he ran north 1 degree, 58 minutes east, marking each half-mile and each mile corner. At 86 chains and 42 links he intersected the closing corner of Sections 2 and 35, T. 18 and 19 N., R. 14 E. His line was 4 links west of that corner which was also marked as described by the Surveyor-General. He found some
21 bearing trees which agreed closely. He proceeded on that line 1 deg. 9 min. East and at 562 chains, 43 links, he intersected the closing corner on the north boundary of R. 19 N., R. 14 E., which was a hard sandstone 28x16x17 inches, marked as described by the Surveyor-General. There were no witness trees that he could identify, but he found some old blazes to the south. He also recalled a line of old blazes to the west on the Township line as it was brought eastward to the closing of the Mora Grant. Witness was perfectly able to identify the monuments found by him at the closing corners of the township surveys on the Mora Grant.

Mr. Seth: If the Court please at this time we want to offer the field notes of the two surveys in question, showing the place of the closing corner referred to by the surveyors of those Townships.

Mr. Davis: If the purpose is to attempt to put in proof to the effect that the Government by other surveys has attempted to locate the west boundary of the Mora Grant.

Mr. Seth: The finding of the corners, we think, obviates any objection as to the original surveyor not being here. We

offer it not only in corroboration of Compton, but also to prove the closing on that line, that Compton's line is run on the line on which the public land closes.

The Court: The Court has ruled that you cannot do that.

Mr. Seth: After this testimony we want to save our exception. They will be admitted for the purpose indicated of merely showing that Compton's line at this point runs on the line on which the two Townships 18 and 19, 14 east, close. That is stipulated subject to the ruling of the Court.

From the point last above described that is, after leaving last township closing corner, witness ran a due north line making a total of 31 miles, 75 chains, where he intersected the line projected due west from what he concluded was Means' meander corner 13 on the north boundary.

Witness spent about two weeks in the vicinity of
22 Means' meander corner 13, searching for evidence of his line, and finally from some evidence he collected he re-established the meander corner 13 which he fixed at 15 chains south of Black Lake. From this point he attempted to re-trace the Means' line backward to meander corners 12 and 11, going back east as far as what appeared to be the Ocate River; also a round lake which Means had said was about 10 chains in diameter. He also retraced several miles of the closing township surveys. He was unable to find any original corner of the Means' survey. Finally he returned to the point 15 chains south of Black Lake and found that following the Means' course reversed from this point north 71½ degrees east at 9 chains, 25 links, he reached the closing corner of Sections 32 and 33. (T. 24, R. 16 E) This course was marked by a stone which was broken in three pieces but had the original markings on it. This was a township closing stone. He then proceeded and retraced northward the call of the public lands surveys and at about 60 chains, intersected the corner of Sections 28 and 29, 32 and 33, which was called for in the official record.

He followed Means' courses reversed all the way back to the Ocate River, but found none of his corners. He also made a thorough search in the vicinity of Black Lake but found no corners. He found Black Lake and 3 or 4 miles east of it the Round Lake mentioned by Means, as they were fairly large and [unmistakeable].

From the meander corner 13, re-established by him, witness ran a due west line to intersect the west boundary previously run by him, and at the intersection established the northwest corner of the grant and marked 8 bearing trees.

He ran 9 miles 66 links west of his meander corner 13 to intersect his West boundary. Witness has recently retraced the eastern and northern boundaries of the Mora grant. The work was done between July 18 and August 26 of this year (1918). He initiated the survey of the east boundary from the southeast corner of the grant which is in close proximity and right at the southeast corner of Las Vegas
23 grant. He fully identified that corner. He had Means' field notes with him at the time. From the southeast corner he ran due north 43 miles, 10 chains to the Ocate River from which point of intersection the corner of section 19, 20, 29, 30 T. 23 N R 21, bears N 9 minutes west 23.70 chs. From there he meandered the Ocate to its source and made connection with the previous survey he had made in 1909.

From meander corner 13 he ran west 9 miles 66 links to the northwest corner of the grant, which he had established in 1909. The total distance west from meander corner 13 to the north west corner of the grant is 9 miles, 66 links. To verify his work he ran a traverse line south of the Ocate River west for something like 18 miles. He started in on this line 5 miles, 10 chains south of the northeast corner; thence ran west over rolling prairie 880 chains, thence north 40 chains, then north 77 degrees west 540 chains, thence north 137 chains, 50 links, to a point on the south bank of the Ocate River, where he set a stake tying it with his true meanders of the river. It came very, very close, to his previous meanders.

Meandering the Ocate River, he had a copy of Means field notes but not the patent, he could not follow Means' courses. He followed the river and went right up the bottom of the canyon. For more than half way across the traverse line run by the witness, Means' courses and his substantially agree. The course of the Ocate River is southeast, except in the eastern part where it is northeast. The course of the Ocate valley is nowhere southwest. There may be places where the channel for three or four chains crooks back and forth, but nowhere does the valley run west of south. The effect of Means' showing the river to run in a southwesterly course instead of a southeasterly course would reduce his westings. The error made by Means in this respect would reduce his westings 27 chains, and would reduce his total westings 54 chains. That would throw his meander corner 13, 54 chains to the east of where it belonged. The difference be-
24 tween Means' distance east and west from the northeast corner of the grant to his meander corner 13 and witness' distance between the northeast corner and his mean-

r corner 13 is 94 chains, 71 links, Means' corner by that
ich east of the corner established by witness, while the
fference north and south between the two meander corners
80 chains, 86 links Means' corner being north of that estab-
hed by witness. Assuming that Means' made such an
ror as that indicated above, the survey could not honestly
made too close. Upon the assumption that Means' mean-
r corner 13 was about 94 chains off its true location indi-
tes that he added to his westings west of meander corner
to make his figure close.

When witness, shortly before the hearing, ran his line from
e northwest corner of Las Vegas grant to the southwest
rner of the Mora grant, he found that the first two or three
urses of Means' meander of Sapello River were about cor-
ct, but after running two short courses, witness ran a
raight course and that took him within a few links of the
uthwest corner. At the time of his recent survey the stone
om which he had started to make a survey of the west
oundary of the grant in 1909 had disappeared, but the bear-
g trees and other witnesses were there, the ones that wit-
ss had marked himself, and from these he was able to
solutely identify the precise point.

In surveying the west boundary of the Mora Grant, he
sed fore and back sights, blocks that he set up and carried
e line northward. He saw the country south of the river.
point called Hermit's Peak, a high mountain, the top of
e peak, was due south and he used it as a back sight for
omething like 20 miles. The nature of the country south
the river was pretty hilly and covered with timber, pretty
ountainous.

On cross examination, this witness testified that at the time
his survey of the northern boundary of the grant he had
ith him Means' field notes, but he did not have a copy of
the patent; that he had not read the patent with re-
spect to the northern boundary of the grant. He as-
sumed that the official field notes recited the true
oundary and the natural features of the grant. He did not
now whether the description in the field notes conforms to
e description in the patent or not. He did not attempt to
ake his survey conform to the patent; could not say that
e made attempt to have western boundary of grant conform
patent. In fact, he had not seen that part of the patent
nd did not have it with him.

"Q. You didn't try to make the line conform to the lines
alled for in the patent did you?

"A. No that wasn't a part of my official mission at that time."

In surveying the north boundary, the meanders of the Ocate River, he was following the natural courses of the Means' field notes, which was the river, and he followed the river where the course took him out of it. He did that for the reason that the character of the country and the course of the river were such that he concluded that this was the course that Means must have followed. It is a very common practice in retracing old lines, to follow topography rather than courses and distances where there is any conflict. Witness is satisfied that the point on the ground where he located meander corner 13 is substantially the same point that was located by Means. Witness thinks that it was substantially from the point established by him as meander corner 13 that Means ran his meander line to the Estillero and on to the southwest corner of the grant.

"Q. Do you know of any place known by the name of Oestillero on the line that you ran? You can answer this yes or no.

"A. I do not know of any definite point called the Oestillero.

"Q. I believe you have already said that in running this west line you were not attempting to run the west line of Mora Grant as called for in the patent.

"A. I believe that I answered some such question.

"Q. Let us read the patent, for a moment, as to the location of the west boundary of the Mora Grant. Beginning at a mile stone thirteen, the patent says,—

25 "Thence from said large mound ten miles forty chains fifty four links to point for northwest corner of the Mora Grant inaccessible in the mountain and not set which point is ninety miles thirty six chains twenty-eight links from the beginning at the southeast corner."

That line which you fixed for the western boundary of the Mora Grant is not 10 miles 40 chains 54 links west of meander corner 13? A. No, it is not.

Q. How far is it? A. It is 9 miles 66 links.

Q. What is the difference between those two?

A. I make it 1 mile 39 chains 38 links.

Q. Practically a mile and a half. So that if that call in the patent were the only call as fixing the northwest corner of the Mora Grant, it would be substantially a mile and a

alf farther west than you have located it. That is correct, it?
A. Yes, from this natural feature; I have not understood at it was a call of the patent, this lake.

Q. I am not speaking about a lake, I am speaking about eander point 13. You say you don't understand that was the patent.
A. In your question you referred to this call of the patent, eander corner 13, the mound of stone. That would be a fference of mile 39 chains 88 links.

Q. "Thence south from said point for northwest corner. t thirteen miles seven chains forty-one links on course, or ne hundred and three miles, forty-three chains, sixty-nine nks from beginning, a stone thirty by nineteen by seven ches in size in large mound of stone and marked W B M G nd on west side Eo," Did you find any such stone on the line nat you ran? A. No, I did not.

Q. "From which mound an aspen tree twelve inches diam-ter bears North seventy-four and one-half degrees east one undred and seventy links distant which tree bears cut in it ne letters W B M G and the word Estiller." Did you find any such tree on the line that you ran? A. I did not.

6 XQ. "And from which mound a pine tree seventeen inches diameter bears north three hundred and sev-nty-one links distant and which tree bears cut in it on the ast side the letters W B M G and the word Estillero." Did ou find any such tree? A. I did not on that line.

XQ. And at the east side of which tree is a stone twenty y twelve by three inches in size in a mound of stones and narked WBMG" Did you find any such stone?
A. No, I did not.

XQ. "At thirteen miles nine chains seventy-one links a rail to Picuris, bearing northwest." I believe you did cross he trail to Picuris. A. I crossed that.

XQ. "At thirteen miles twenty-five chains fifty-nine links he Pueblo river bearing northwest and southeast." Did you un across the Pueblo river?
A. Yes, I crossed the Rio Pueblo, but not in this vicinity.

XQ. Where did you cross?
A. Nothing in my notes. The Rio Pueblo that I crossed, forget whether farther north or south of this.

XQ. But a small stream running east into the Rio Pueblo nd you crossed that within a mile or so of your northwest orner?

A. I presume this is the creek. I don't recall exactly.

XQ. At any rate, taking this for the Pueblo River called for in the patent being thirteen miles from the northwest corner you didn't cross it?

A. I didn't cross any river known locally as Pueblo River.

XQ. As a matter of fact, you know where the Pueblo River is?

A. I think I know the one you refer to which flows westward into the Rio Grande.

XQ. You were up there quite recently. A. Yes sir.

27 [XQ.] How near does your survey at its nearest point come to the Pueblo River? A. Oh, perhaps, mile.

XQ. Could you indicate on the map at what point your survey is within a mile of the Rio Pueblo? Of this Rio Pueblo which runs westward into the Rio Grande?

A. It would be, I should say, about right along here. (indicating a point directly west of the point marked Estillero on the map.)

XQ. Do you know the portion of the valley of the Rio Pueblo where the Picuris trail formerly ran along the river.

A. Where the trail first strikes the upper portions of the river I am not familiar with. I am familiar with the River from the Rio Grande up to a point three or four miles west of my line.

XQ. What portion of the Rio Pueblo would that be, three or four miles west of your line?

A. That would be a long here. (indicating on map)

XQ. You know where these stones are?

A. I made no ties to them.

XQ. When did you visit those?

A. I visited those about the latter part of August.

XQ. You say you made no ties to them?

A. I didn't run any lines to those stones. I visited those stones.

XQ. Can you tell us approximately how far east of those stones the line which you surveyed for the west boundary of the Grant runs?

A. You mean at right angles or north 42 degrees. Perhaps at right it is something like three miles.

XQ. Your line would miss the stone by that distance?

A. Perhaps so.

XQ. Necessarily miss the point on the Picuris trail called for here in the patent for approximately the same distance?
A. I cannot say as to that.

XQ. We got as far as the Pueblo River. "At thirteen
28 miles forty-one chains ninety-one links at foot of high mountain a stone eighteen by twelve by five inches in size in a mound of stones and marked W B M G." That is one of the stones you have just referred to. "At thirty-three miles thirty-three chains twenty-nine links on course, or one hundred and twenty-three miles sixty-nine chains fortyseven links from beginning, southwest corner of the Mora Grant, a stone twenty by fourteen by six inches in size in a mound of stones and marked S W C M G and standing on the edge of a high mountain on left bank of the Sapello River." Did you find that stone in your survey?
A. I did not find any marked stone."

The stone from which he started his survey for the west boundary of the Mora Grant is further west from the northwest corner of the Las Vegas grant than the distance given in Means' field notes, by about half a mile. When asked in what respect the line which witness ran for the west boundary of the Mora grant conformed to the lines called for in the patent, he replied that it was about the right distance west from the east boundary of the grant; almost exactly the correct distance; that he did not disregard any natural features in running his lines; that he never ran the west boundary of the grant as such, as he was acting under specific instructions from the Department to project that line. He did not run an exact north and south line for the west boundary. He angled somewhat to the east. Witness did not ever run the traverse line from meander 13 down to Mora, and down to the southwest corner of the grant. He never ran any part of such line, although recently he had made some fragmentary retracement in the vicinity of Mora or assisted in doing so.

On re-direct examination this witness testified that in August 1918, he went to see the stones in the Walker line, in company with Mr. Kirkpatrick who had formerly visited the stones, it was something like three miles west of the line witness had made The [northermost] of these two
29 stones was a sandstone and measured with his hands was 18 x 6 and set 20 inches above the ground. On the east side it was marked W B M G—rather old marks; on the west side it was marked E. O. rather new looking marks. From this stone he ran south. It was raining a little so he couldn't see well. He could see the other stone across the river and ran for it and measured it. The two stones were 34 chains and 49 links apart. (The patent called for 34

chains 50 links; he found it practically exact. The south stone was a thin sandstone, 15 x 15 above the ground 2½ inches thick. It had some faint markings on the east side. He thinks it was marked W B on the east side. The marks were rather faint. Both of these stones were set part of the way up on the hillside from the river bottom. From the [northermost] stone it was about 8 chains to the level bottom. (at 18 chs. intersects Rio Pueblo; at 25 chs. old channel. The stone on the south was 7 chains up the slope of the hill; appeared to be directly south. At the northernmost stone witness found no bearing trees, though he measured at the distance called for in Means' field notes to the north and east looking for the quaking aspen. He did not find it. He also looked for the pine tree; said to have been marked by Means, but he did not find it. From the north stone, where the pine tree was said to stand, it is almost one chain north to the timber line. Continuing north from the north stone the slope of the hill was rather more gentle, and it would begin to descend again within five chains. It would descend into the east side of the valley of the Pueblo River. There was no reason why the line could not have been run further north. The country over which it would have continued ascending gently for a few chains, perhaps 5, thence to the descent into the eastern edge of the valley of the Pueblo through the timber. It would not go over any mountain until it had dipped into the valley again slightly. On the south the average slope to the stone was about 5 degrees, and the same slope continued for some distance beyond the stone a few chains. The southernmost stone is about 50 or 75 links from any trees. Both stones can be seen plainly from the road. In running the line from the northernmost stone witness found nothing to indicate why the surveyor should have stopped at that particular point viz: at 34 chains, 50 links. The surveyor could have made a half mile without any difficulty.

In reversing Means' course from Upper Mora the course from the E O stone would run over a little timber land, but would start out at once and go along through the south, ascend the south slope and go up several hundred feet through the timber. It would not run through the valley of the Pueblo for any appreciable distance, it would not touch the valley of the Rio Pueblo. It would go over the south slope of the mountain. The country from the stone towards Cleveland is generally very mountainous. For most of the way the line runs over high divide then descends over mountain land for some miles crosses canyon and some little streams.

Witness ran the line from meander corner 13 to the northwest corner of the grant, which was stated by Means to be inaccessible and he also ran a line north and south through the mountains on the western boundary of the grant. The character of the country on these lines is hilly and mountainous, timberland, but it is not any worse than the course 42° W. from that north stone down to Cleveland. In the judgment of the witness it would take a man two or three days to run a line 9 miles from Cleveland on a course north 42 degrees west if he did good work. It would not be possible for a man to run that line in one day over that mountainous country.

There is a house and cultivated field in the low place here described. Witness meandered the Ocate and ran to MC 13 of the Mora grant, but could not find any of Means' original monuments. The stone marked E O on the Walker line is not visible from points in the Mora Valley. It is west of the divide. On a line north 42 degrees west the stone is something like 2½ miles west of the divide. From an examination of the stone of the Walker line he could not tell with any degree of approximation the age of the stone. He does not think it possible to tell the age of stone after any considerable number of years. He does not believe that those stones are logically connected with the Means' survey of the Mora grant. They are in such an absurd position that it is hard to believe they are a part of the Means' survey. Witness was at Cleveland shortly before the trial and at that time made an effort to locate places in the mountains visible from Cleveland. There is a low place lying between witness' line and divide proper of the mountain. His line touches the northeast edge of that low place, and between his line and the divide there is something like a mile in distance to the top of the divide. There is a valley, a low place, several houses with cultivated land. The old trail to Picuris runs across this low place. There is a little river running southeast or eastward through the south edge of this low place. Witness thinks it collects the waters from several tributaries heading in this low place and to the southwest of it. He understands that the Pueblo is brought through that stream as it is water coming through pipes and irrigation ditches. From the old Church at Cleveland to the most [prominet] spot in the low place, that is the southern part of it, which is visible from Cleveland, the bearing is north 46 degrees 5 minutes west. That place would be about a mile west of witness' line, while his line from Cleveland on the course north 42 degrees west is 337 chains and 90 links.

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Minnesota State Library,

Q. Did you make any investigation or attempt to run Means' traverse line south from Cleveland while you were there? A. I did.

Q. State what you did.

A. I started from a point near the center of Upper Mora or Cleveland; there is an old road which runs south 19 degrees west, as I recall it. Means' first course out of Cleveland, the plaza of Cleveland, was south 19 degrees west. Upon my arrival at that place and looking over the ground it struck me very forcibly that this old road might have been the natural point that he should follow.

I started at the beginning,—5 chains 85 links south-
32 west of the old church, and ran south; thence 19 degrees west along this road 15 chains 7 links Means course; then his field notes stated that he ran 19½ degrees west; I note this road makes a slight turn to the right again to the west, so I followed 19 degrees west which followed along the east edge of this road, and thence follows on this course south 19½ degrees west; at 440 I crossed a ravine running northeast; at 7.50 old channel of this ravine running northeast; Means called for same natural features. At 11.20 old channel ran; at 29.30 present main stream of the Rio 29.30 ran northeast. at 39.95 was the termination of Means' course; that took me to the foot of the hill at the south side. I noticed from this point the old road; thence running southward and more to the left there was a ravine almost parallel with the road; my impression was it would be natural to run over the line of least resistance; from there I therefore continued on Means' courses; south 7½ degrees west 12 chains 65 links; south 12 degrees west 4 chains 15 links; thence south 30½ degrees east 12.45 chs., sighting points along. Thence south 42½ degrees east I note that these courses follow right up the bottom of this swale and rather parallel the old road to Cebolla, and were naturally the courses of least resistance in getting over the mountain and leaving Upper Mora at Cleveland; that was as far as my investigation went in that direction.

On further cross-examination this witness testified that while Means did not say he was running down the road to Cebolla, nevertheless, his field notes show that later, on that line, he did pass through the village of Cebolla. In running these lines he was tracing Means' traverse south from the place witness took to be Upper Mora, and not from Mora to Upper Mora.

On further cross-examination this witness testified he considered the stones in the Walker line as in an [absured]

location, for the reason that they were something like two miles farther northwest than the field notes called
33 for; and for the further reason that they are two or three [mileswest] of the main divide which is very high and very prominent and can be plainly seen from Cleveland. There is nothing in the vicinity of the stones, no striking visible features that would be noticed by any one in passing by. He found the Pueblo River there, conforming with measurements given by Means from these stones, and while that was a striking feature, any number of places could be found along it where the stones could be placed in proper relation.

Witness assumed that Upper Mora was identical with the present town of Cleveland, and one reason for his saying that the stones were in an [absured] position is that they were not the proper distance from that place. He does not know from personal knowledge in 1861 that Upper Mora and Cleveland were the same place.

"Q. You say it is an absurdity to allow natural or artificial monuments to govern.

A. If the natural objects are not natural.

XQ. Is there any dispute about the Pueblo River?

A. There is no mistake about this being one Pueblo River."

Further cross-examined, witness stated his reason for considering it [absured] to say the Pueblo River is a boundary call rather than the stated distance from another uncertain distance. Along the Pueblo River there are any number of points where these stones could be put in proper relation as the river flows northwest. Any point from the mountain divide westward for perhaps two miles, the stones could be moved up and down, he believed. That was his personal belief. He said he had ma le no survey of the Pueblo River to ascertain the truth of this statement. He didn't make any measurements. He was judging from eyesight by driving along through the valley there. He stated that if it appeared that the point on the pueblo where the stones are located today is the only point on that river which answers to the measurements called for by Means, it would be a strong argument in favor of the location, but he would still attempt to find some agreement between distances and location of stones. If the topographical features were absolute
34 and convincing beyond any question, he would be inclined to follow the topographical features. He stated that he came to the conclusion that there were several other

places where the topographical features would hold simply for the reason that he drove or rode over that country.

He admitted as a fact that the Pueblo River is fixed by Means as the controlling call of that survey, wherever that may be. He has never heard of any other Pueblo River in that country except the one referred to by him east twelve or thirteen miles away but which he considered a tributary of the Pueblo River running west.

"Q. You say it is [absured] to fix a point from the Pueblo River at two miles down from the mountain. If it was some other point on the Pueblo River it would not be absurd.
A. If it could be seen from Cleveland.

Q. Can the Pueblo River be seen from Cleveland.
A. No it cannot. That is one reason it is absurd position."

Witness measured the distance between the two stones on the Walker line and found that they check with the distance given by Means. Almost miraculously. He said that because he was surprised to find it so close after having retraced other boundaries of the Means Survey. He thought it was miraculous that Means should give the distance so exactly after having missed the distance from Cleveland by several miles.

"Q. Did it surprise you that the distance given by Means from the east side of the Mora Grant to the west side of the Mora Grant, which you say is thirty-odd miles, did you find that surprising? A. [No] so much so.

Q. You think it is more surprising that you should agree on a half mile than that you agreed on thirty?
A. I think he calculated his distance from the west boundary, and he was a good calculator."

Witness is satisfied that Means did not run a straight line from Upper Mora to his Estillero as fixed by the
35 Walker stone in one day. He might have gotten the distance by triangulation. It would require a considerable number of traverse lines to compute the distance, and when Means computed the distance from the Estillero to Cleveland, he was a poor calculator.

On further redirect examination, this witness testified that in his opinion it would have been impossible for a man to run a traverse line from Upper Mora to the Walker stones in one day and get any correct result. A man could never have triangulated to a point from which the Walker stones could be seen without going to the top of the divide. To triangulate from Cleveland to the top of the divide would

require one long base and from the top of the divide to the stones he would have to run two or three bases. There is a high mountain between Cleveland and the divide.

On further cross-examination, this witness said that in saying Means did not do all that work in one day he based his statement on Means' field notes, and Means may have been just as loose in that statement given in his field notes as he was in others.

G. D. D. KIRKPATRICK, a witness called for the plaintiff, testified as follows:

He is assistant Supervisor of Surveys in the General Land Office located in Utah and Nevada. He received engineering at Cornell. From 1901 to 1913 he was engaged in mechanical engineering. Was employed in the General Land Office at Washington. In July 1904 he was appointed Examiner of Surveys, which position he held until 1910, when he was appointed Assistant Supervisor of Surveys for the District of New Mexico. He remained there until 1913, when he was detailed to Utah and Nevada. He has been continuously engaged in public land surveys since 1904.

In 1906 he was detailed by the Commissioner of the General Land Office to locate meander corner 13 on the north boundary of the Mora Grant, and in 1910 he had occasion to go back there in connection with the Compton survey and the Walker survey. In 1906 he ran a traverse line
36 from Meander corner 13 to a point 7 miles, 32 chains, 30 links from the present town of Cleveland. He has been back on the grant since, but not in the vicinity of Black Lake. He has been in the vicinity of Cleveland, Rio Pueblo, and along the Sapello River in the vicinity of the Las Vegas Grant.

His work in 1906 was searching in the vicinity of meander corner 13. He did not have at that time sufficient data to thoroughly follow Means' line east of the locality of Black Lake so he spent most of his time searching the shore of Black Lake for Means' survey. He attempted to locate a point that would agree with Means' distance from the Ocate River and at the same time permit of his running over Means' courses over the route that he apparently took down the river to Guadalupita. He had with him Means' field notes of his traverse line from meander corner 13 to the Estillero, and after attempting to locate meander corner 13 he finally arbitrarily selected a point and determined to ascertain the relative positions on the ground of the church

in [Guadulupita] and Black Lake. He found no evidence whatever of Means' monument meander corner 13. He arbitrarily selected a point on the ground which, it appeared to him, would "harmonize best the inconsistencies of the Means survey at that point". Then he ran to Guadalupita (Witness produced the notes he made on the ground at the time). The official point of his survey from Black Lake was 9 chains, 19 links north, 13 chains, 37 links west, of the meander corner 13 restored by Compton. Compton's survey had not been made at that time. Witness made an effort to run the Means traverse line south from meander corner 13, but the canyon of the Coyote River is rather narrow and has many sharp turns and twists, and witness could not follow Means' courses and remain in what would be the natural course of the survey down the canyon. It appeared to witness that Means had made many mistakes or had adjusted his courses and distances, so witness abandoned the line; to have followed Means' courses and distances would have taken him over broken mountainous country presenting exceptional difficulties to surveying it.

37 Witness ran to the church in Guadalupita. The Distance in latitude between the point as found by his survey and Means' location is 65 chains, 78 links. In departure, 5 chains, 70 links. Latitude means north and south; departure means east and west. Means' theoretical point was north and east of the point reached by witness. Reckoning it from Guadalupita, Means' point was 65 chains, 78 links north of the point fixed by witness. The effect of that would be to place meander corner 13, 65 chains, 78 links north of where it is.

From Guadalupita, witness attempted to follow Means' traverse line south and went to the present town of Cleveland. He followed the line for several courses; then it took him out of the valley up into the hills across mountains; that was at the end of the eighth course, where he reached a ridge on the west side of the valley, and it was clearly apparent to witness that Means did not continue on his course from that point, as he would not run over mountains when he had the valley to run through. From that point witness abandoned that line and followed the line of least resistance. Crossed the Mora River to the present town of Cleveland

The difference between Upper Mora as located by witness was 64 chains 1 link north and south, and 46 chains, 55 links east and west. That is to say, Means located Upper Mora 64 chains, 1 link north and 46 chains, 55 links east of Cleveland as fixed by witness' line. Witness is convinced that he

found the forks of the road referred to in Means' survey; one road ran slightly west of south to Mora, the other ran southwest and skirted the base of the mountain and apparently went to Cleveland.

(Witness produced copy of working map prepared from his data, the original of which was sent to the General Land Office. Map offered later in evidence as plaintiff's exhibit 30.)

The black line on the map represents witness' traverse line from Black Lake. The red line is Means' traverse line
38 protracted northward from Guadalupita and southward from that point to Upper Mora. The River Mora is correctly located where witness crossed it in 1906. Map also shows the location of the River Mora as fixed by Means. Witness found the church in Cleveland to be 80 chains, two links north and 46 chains, 85 links east of the position given it by Means, reckoned from Rociada, which witness concluded was Rincon.

In 1906 witness ran the traverse line north 42 degrees west, that is supposed to end at the Estillero. In surveying that line he began at the church in Cleveland. He ran north 42 degrees west, the distance stated in Means' field notes. The distance between the Compton line and the Walker line straight east and west is 3 miles, 36 chains, 81 links. The distance between the northernmost stone found by Walker from the town of Cleveland on a straight course north, 41 degrees, 3 minutes west, is 9 miles, 45 chains, 75 links.

The surveys made by witness indicate that his and Compton's location of Black Lake are practically identical. Witness' figures indicate that Compton's location of meander corner 13 is more nearly correct than witness'.

This witness further testified that he ran a line from the northwest corner of the Las Vegas to the southwest corner of the Mora Grant, followed Compton's west boundary to point from which witness had previously run a line to the church in Cleveland and this, with the line that he had run from Black Lake to the church in Cleveland, shows that Compton's survey, placed Black Lake and the northwest corner of the Las Vegas Grant in their correct position.

Witness examined the northwest corner of the Las Vegas Grant when he was there recently. It was the same corner from which he ran his line originally when he made an examination of the survey at the southwest corner of the Mora Grant.

Witness was asked, referring to plaintiff's exhibit 25, and assuming that the surveyor had run his lines fixing the

southern boundary, his eastings and westings deter-
39 mined by a previous survey, and further assuming that in running from the northwest corner he had made errors in his notes and placed the point indicated at meander corner 13 over a mile east of its true location, whether it would be possible for his figure to close without correcting his survey. The opinion of the witness was asked as an experienced public land surveyor. To this witness replied that a surveyor would either have to make a compensating error or balance his figure and adjust his courses. Assuming that no compensating error had been made in the particular case, he would have to increase his westing.

On cross examination this witness testified that Means' position of Lower Mora was about 2½ miles from its correct location.

JOHN FLORENZE, a witness called for the plaintiff, testified as follows:

He is 68 years old. For the past forty years has lived 7 miles east of Mora. He knows the town of Cleveland. The town has previously had other names. It was known as San Antonio. It has also been called Upper Mora. The name was changed to Cleveland in the first Cleveland administration.

On cross-examination, this witness testified that all that part of the valley around Cleveland was called Upper Mora or Upper Valley, including Canyoncito; about two to five miles east and west and north and south of the valley was called Valle de Arriba in Spanish and Upper Mora in English.

On re-direct examination, this witness testified as follows:

R.D.Q. "Was the whole valley called Upper Mora?
A. Upper Mora meaning the town.

Q. And the town is Cleveland? A. Yes."

He never lived in Cleveland.

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40 PEDRO BORNAL, a witness for plaintiff, testified as follows:

He is 60 years old and lives in Cleveland. He lived there all his life. The present town of Cleveland was first called by that name when the postoffice was established there. Before that it was called San Antonio.

Q. "Did it ever have any other name?
A. Valle de Arriba, Upper Valley.

Q. Did it ever go by the name of Upper Mora?
A. Yes, sir."

On cross-examination this witness testified that he knows ie Canyoncito, and that it is also known as Valley de Arba. The whole valley, including Canyoncito, known as Upper Valley. The precinct was about three miles wide. He ved between Canyoncito and Cleveland.

Milnor Rudolpho, a witness called for the plaintiff, testied as follows:

He is 54 years of age and lives in Mora. Previously to goig to Mora he lived in Quay County. Before the town of leveland was given its present name, it was called San Anonio, or Valle de Arriba, or Upper Valley; it was also alled Upper Mora.

Agapito Abeyta, a witness called for the plaintiff, tesified as follows:

He is 57 years old; was born in the Cebello Valley near Iora. He knows the town called Cleveland. Before that it vas called San Antonio, Valle de Arriba.

"Q. Did you ever hear it called Upper Mora, the same own as the present town of Cleveland? A. Yes, sir."

On cross-examination, this witness said that before the own was called Cleveland the usual name was San Antonio. The Valle de Arriba, or Upper Valley, was the term used to describe all the settlements clear up to the Canyoncito. It was called Upper Mora in English.

Blas Gallegos, called as a witness for the plaintiff,
41 testified as follows:

He is 58 years old and has lived in Mora for 52 years. He is United States Commissioner and Justice of the Peace. The town of Cleveland was first called by that name in 1884, during Cleveland's first administration. Before that it was called San Antonio and Valle de Arriba. It was also called Upper Mora or Upper town. He never knew any other place in the valley being called Upper Mora.

On cross-examination he said that the name as he had heard it was Upper town.

The plaintiff here offered to prove that since 1882 and up to within a year or two of the trial the Government disposed of lands under the homestead and other land laws through the area extending 3½ miles west along the western boundary of the Grant as fixed by Compton, which offer was refused.

The plaintiff also offered in evidence certified copies of decisions of the General Land Office and the Department of the Interior, holding that the western boundary of the Mora Grant should be established along the line run by A. E. Compton and that the public land surveys should be closed thereon. This offer was refused and the plaintiff excepted.

The plaintiff introduced the following statement showing the area of the Mora Grant.

Area as stated in the patent, 827621.01. The above area figured according to the courses and distances as given in the official field notes, 825.995.29. The area as shown by the Compton retracement and resurvey of the east, north and west boundaries, together with the Johnson resurvey of the boundary of the Las Vegas, 819,423.07. The excess given to the Grant by the Walker survey, 57,586.46.

Defendants' Testimony.

J. H. WALKER, called as a witness for the defendants, testified as follows:

42 By occupation is an engineer, surveyor. Has followed it constantly since 1894; before that time he followed it for several years, but has been in other work. He was in the contract business in 1894. He was constantly in the contract business until the contract system was abandoned by the Government. From 1894 until the present time he has done more or less government work. As a Deputy Surveyor of the United States he had occasion to locate the western boundary of the Mora Grant, in 1902. He had taken a contract to survey some townships that closed upon the western boundary of the Mora Grant. In order to complete that work it was necessary to establish the western boundary of that Grant. He was doing that work for the United States. According to his instructions the west boundary was to be located by a north and south line through the Estillero down to the Sapello River. In accordance with

se instructions he located the Estillero; he had a great l of difficulty in finding it. At the present time, or the e when the witness was there, the entire valley was own as the Estillero Valley; it was the valley near the d of the Rio Pueblo, beginning where the road from os reaches its highest point going over United States l and drops to the valley going towards Mora, going down Mora river.

He spent several days searching for the monuments of Estillero before he found them. An old gentleman by name of Pais, who lived there a great many years, owed him the monument. Witness agreed to survey Pais' mestead if he would show him the stones. The stones owed to witness were to the right of the road as you go wn the valley; at the lower end of this Estillero Valley, just a short distance on the slope of the hill. When wit-ss saw the stone it had fallen on the ground. He exam-ed it after it was pointed out to him. At the first glance did not recognize it as a marked stone. He turned it er and found a mark thereon, the letters E O. That mark-g was easily legible. He then examined the upper side of stone again and found that the letters W B M G had own so full of the little rock moss that made them hard to distinguish, but on close examination they were perfectly distinct. The marks must have been quite old, because that moss takes a long time to grow on a one. The entire side of the stone that had been exposed the weather was covered with the moss. As the stone lay ere on the ground as he first saw it, it would be revealed ly on close examination.

At that time witness had with him a copy of the field notes Means' location of the stone, which he said he placed at e Estillero. The measurements of the stone and the Pu-lo River agreed very closely with the distance given by eans. There was also pointed out to witness a place as ing where the trail to Picuris formerly was. He meas-ed the distance between that stone and the trail and the stance agreed very closely with that given by Means. oing south he struck the trail to Picuris before coming to e river. The trail to Picuris was very faint at that point.

From that stone he continued his measurements south and und another monument to the south of the Pueblo River the proper distance called for by Means, namely, 34 ains, 50 links. It was a marked stone; it was not a monu-ent, for there was no stone upon another; there were just few scattered stones as evidence that it had been a monu-

ment. The marked stone had on it W. B. M. G. He found two of the stones.

Witness examined the topography and found it agreed with that given by Means in his field notes. (It was right at the foot of a mountain as Means' notes called for. Witness afterwards ran a line to the south of the south stone that he found, and found the character of the country very mountainous. He ran a line to the north of the north stone that he found, and found the character of the country extremely mountainous. There was a high mountain at the place where the northernmost stone was found, and it was quite mountainous where the southern stone was found. .

44 From the investigation made by witness, he was thoroughly convinced that he had found the point fixed by Means as the west boundary of the Mora Grant. Through that point he ran a north and south line far enough to cover witness' work. He ran 24 miles north of the Sapello River which would be 11 or 12 miles north of the Estillero. To the south he went to the Sapello River. He marked the line as far as possible by monuments, marked stones and blazed trees. From the monuments to the Sapello River the country was something fierce, very mountainous; and it was extremely mountainous on the north also.

On cross examination, witness said he did not remember the distance from the northwest corner of the Las Vegas Grant to where witness' line intersected the Sapello, but it was probably something like five miles; it was considerably more than Means' notes called for. He ran his west line far enough north to intersect the boundary of the Rancho del Rio Grande. His contract called for the subdivision of Townships 20, 21, 22, and he ran far enough north to cover those townships. He had looked for the Estillero farther up the valley and had triangulated down to Cleveland from up on the rim. From Cleveland he attempted to locate the point, considering that Cleveland was Upper Mora. The stones were two or three miles farther west than the distance given in Means' field notes for the distance from Upper Mora to the stone.

Casimero Pais took him and pointed out where the stone was located. Witness made no threats to him in regard to his showing the location of the stone. Witness' camp cook had some talk with Pais, when the latter said that he had gone up to see the stone, and the cook said to look out about touching the stone as it would get him into the penitentiary.

itness made no threats; the cook made the threats; he ally did not make any threats but simply cautioned Pais.

The whole valley is called the Estillero Valley. It be- ns on the north at Angostura del Cabellos, that is, the arrow pass. That is the eastern boundary of the Santa Barbara grant. It extends in a general northwest and southeast direction several miles, and is not a wide valley. Where these stones are located they are most at its northwest extremity. The stones were about s far west as they could be and still keep in the valley.

Where he found the stones the whole hill was stone—very ttle soil—mostly all stone. He found nothing to indicate mound of stone around the corner stone. The stone was on ne western slope of the mountain, a distance of probably 00 [yeards] up the hill above the foot of the mountain. n the north it was 3 or 4 chs before timber commenced. he slope of the mountain is about the same north of the tone as it is south of it. He found trace of the trail on the ocky hillside. By moving the small stones one could find faint sign of the trail. The logical place for the trail was long the base of the river where the present road is, but itness' recollection is that he questioned the people as to hy they went up on the mountain and was told that there as so much brush they could not get through; there is no rush at the present time at the base of the mountain. He ade no mention of the trail in his field notes. The stone s on the west slope of the mountain which is pretty high here.

Witness made no attempt to run out Means' course south 2 degrees east of that stone; it would go over a pretty ard mountain and the country between that and Cleveland s exceedingly rough and mountainous. He did not find the earing trees given by Means for the north stone. The southernmost stone is right at the foot of the mountain. The southern stone might be a chain distant from the heavy timber; witness does not remember. His recollection was that you at once entered timber and onto the east mountain slope.

VINCENT K. JONES, a witness for the defendants testified as follows: He is a civil engineer and has been engaged in the practice of this profession about eight years. He took the engineering course and graduated at the Colorado School of Mines. During the practice of his profession he has been engaged practically all the time in New Mexico retracing

the surveys of old Spanish grants. He has retraced
46 about fifteen or twenty grants.

Witness knows the place in Mora Grant, known as the Estillero. He was first there about two years before the hearing. He has run several lines through the valley taking detailed topography of the whole valley, tying on to the different objects (witness produces a map showing the result of work). The map represents the valley of the Pueblo River, or the Estillero, the blue line running all the way down represents the river known as the Rio Pueblo. The black line running the entire length of the valley represents the old trail to Picuris so far as witness was able to identify it. He traced it from the south end of the map to about one quarter of a mile west of Stover's Point. He next picked it up at the Rio Pueblo about one-half mile of what is marked "Post" on the map. He was able to trace it to a point west of the point marked "Ruins of Old Hut." From there on the road and old trail go together.

Near the end of the map is a point marked "Estillero Monument," that is an old sandstone monument which corresponds to the monument called for by Means, which he marks "EO." To the south of that stone on the other side of the Pueblo River to the point marked "Means Monument," is the south monument called for in Means' survey, which is marked "W. B." Witness measured the distance from the "EO" monument and the south stone to the Rio Pueblo. The green line on both sides of the valley represents the edge of the timber. The timber line is correctly fixed as shown on the ground. Map is correct and made from actual measurements and shows true relative position of data thereon.

Witness compared the distances from the old trail to the "EO" stone from the Rio Pueblo to the south stone and found they compared very closely with Means' notes, except as to the old trail. At that time he did not have Means' notes, he was not able to locate the old trail at that point.

North of the point on the map marked "EO" monument witness found an old stone marked by Means. It was broken in half when he found it. One-half was marked by Walker.
On the other half it was marked "WB." That mark-
47 ing appeared to be very old. These broken stones were a part of Walker's mound for his nineteen-mile corner.

The letters on the Estillero monument were "Eo", very distinct, and on the other side W B M G, or B. G. as he read

t. Part of the letters were distinct. Part of them were eroded away.

The "Eo" stone is on a low ridge which witness would say corresponds to the call in Means' field notes, low place in the mountain. Running east of this corner he ran into very steep country after leaving the monument fifty feet. To the south and west of the southern stone the slope was very steep; due south it runs angling, a deep slope over a high mountain.

Witness knows the relation of the stones to the trail and the Rio Pueblo. Witness' map shows the topography of the entire valley. Where he found the monuments, the distance between them and the distance to the Pueblo River checked with Means' survey, except that the monument to the north is a little [father] from the "EO" stone and the southern stone.

Witness had prepared and identified a small drawing showing the relative position of the stones. Picuris trail, and other land marks, called for in the patent, with the Pueblo River, which he placed over various portions and locations shown along the Pueblo River by the maps he used in his examination, to show the points of agreement or disagreement on those maps with the land marks called for in the patent. Witness was unable to find any other place on the Pueblo River from the Angostura south that would check with the topography and Means' calls. Point marked "C" on the map is the place where the Picuris trail crosses the Pueblo River. From that point on, the trail is east of the river, its correct location. There is no other point in the valley where the trail is on the correct side of the river, as called for by Means. The point marked "B" on the map is the channel of the river. That stream rises at the point marked "Spring." Point marked "K" on the map shows the post set by Kirkpatrick. Along the lines between "EO" stone and the southern stone there is a blazed spruce tree
at least fifty years old, the blazed tree being about
48 nine feet east of the line between stones. He knows
the age of the blaze by the growth of the tree. It was a surveyor's blaze cut into the wood. It was one and one-half matches deep. The point at the southern end of the map is a little gap in the mountains; he traced the trail into the Mora Valley. (Map offered in evidence as defendant's exhibit A, map by Jones.) Defendant also offers photograph made by witness of the blazed tree marked defendant's exhibit B. There is another blaze on the other side made by Walker (defendant offers another photograph rep-

resenting a ridge, marked defendant's Exhibit C, a point on the road as you come up from Holman.) The pencil mark on this last photograph shows where the stone was found. Witness took photograph Exhibit C, and it correctly represents the situation there. Witness is familiar with the town of Mora and with the country in general in a north and northwestern direction. He made an attempt to run out on the ground the traverse of Means by which the latter reached the Estillero. He took for a starting point the old Court House at Lower Mora. He took that point for he was attempting to locate the west boundary on the ground and the old Court House was the nearest fixed point. He made a map showing the final result of all his work which he produced.

Witness located on the earth's surface the point which bears the relation to the actual court house called for in Mean's notes. That point is marked "A" on the map. It is on the side slope of a hill known as Sera Della Cruz, a well known hill in that locality. Means' notes of traverse of the line for which the call to the court house was taken, show a course of south 64 degrees west. His next course was north 80° 34′ west 22 chains; at 21½ chains, Rio Mora crosses east. Many houses on left of line. Those lines are indicated on the map and show the crossing of the Mora River to be on the top of a mesa by running line actually called for by Means. The mesa is south and east of the river and about two miles from it. It is about six to eight hundred feet above the river.

49 Witness concluded that Means did not run south and west from point marked A for in running out the line when they came to the point in the notes "cross the Mora" the point fell on the top of the mesa which they determined he could not run up from the point marked A. The Estillero is in a northwest direction from that point and there was no reason why Means should run southwest. Means must have traversed northwest from that point to keep in the valley, so witness ran his course northwest.

Witness ran the second course which called for crossing the Mora River and he crossed the Mora River as called for. The line indicated in black, dotted and dash, is the point and is marked "crossing Rio Mora". The map substantially shows the topography there. There is no other point at which it is possible to cross the Mora River on the distance called for by Means, pursuing the relation between his two courses than the point indicated by witness as "crossing Rio Mora" or at least, you could not move it more than a few feet one way or the other. The point marked "crossing

Rio Mora" is the only point witness could find as substantially the exact point at which Means crossed the river in running his traverse. Witness made the course South 64° West, read North 46° west.

In attempting to relocate an old line run by engineer where you find fault between the topography of the country and the natural points called for in the old survey and there is a conflict between those and the courses and distances called for, witness' practice is to let the natural objects govern. In this, he agrees with Johnson and Compton.

From the above point witness followed out the courses of the Means' survey without variation. The line so run is indicated on the map crossing the river Mora from where it runs for several courses to a place called Canoncito.

"Q. Did the point at which you have written the word Canoncito' on your map correspond in courses and distances with the point called for by Means as being Upper Mora? A. It did for that much, that one course.

Q. That is the one you have already testified to? A. Yes."

Canoncito is a place where there are a few scattered houses and some ruins, three or four houses in use and a number in different stages of decay.

The dotted line on the map shows the trail to Picuris. Witness had no trouble in actually following that trail. It is along in the canon up on the hillside and out of the canon and continues down the valley of the Rio Pueblo. Witness actually ran the traverse line from Canoncito to the point marked "Eo" which indicates the monument that he found there, and he fell within ten chains of it north and south, and very close east and west. It was approximately correct. Witness does not believe it was possible for Means to have run his line called for in his survey as being northwest some seven miles and forty chains between upper Mora and the Estillero monument. He probably might have triangulated and traversed, or traversed the trail and calculated. Witness adopted the latter method. The black line on the map shows the only course that Means could have run through there.

Witness said that the black line shown on the map starting at old court house in Lower Mora, crossing the Mora River, reaching Canyoncito and thence running to the Estillero mountain, so far as he knew is the only logical line Means could have run through there in 1861, partly because of the direction in which he was traveling and because of

the fact that no other way could he have crossed the Mora River where he says he did. The reconstructed line does not touch Cleveland. It is half a mile away. It is not possible to get from the point marked "A" to the Town of Cleveland without crossing the Mora River within the distance stated by Means for his first course from point "A". If means had run from that point on the ground to the town of Cleveland, he would have crossed the Mora River on his first and not his second course.

51 The map prepared by witness is offered in evidence.

On cross examination this witness testified as follows: His map is based entirely on the call to the Court House in Lower Mora. It disregards all previous courses of the traverse line east of it. It assumes the location of the court House is correct in respect to his other lines. The Court House was not in the line that Means was running but it was a fixed object. Means probably took a shot at it and triangulated and figured the distance which he reported to be 155 chains. Witness tied to that one call and based the whole theory of the map on that point, because he gave as much weight to that part of Means survey as any other part.

He assumes that Means was running on a course south 64 deg. west when he took the shot at the Court House at Mora, but the following portion of that course was incorrectly stated by Means. He does not know whether the land divide can be seen from Canoncito or not.

He did not attempt to trace Means' line north 42 deg. West, as that would have been wasted effort. Point "A" on defendant's Exhibit "G" is visible from the Court House in Mora.

The place of the stone in the Walker line can not be seen from Canoncito, there is a divide between them 2 or 3 miles high. Witness was at Canoncito and Mora making investigations four or five different times, spending two or three days at a time. He spent ten days or two weeks on the work.

Witness knew that the survey of the Las Vegas Grant had been made when Means surveyed the Mora Grant, but he made no effort to tie to that.

XQ. How far is the line north and south through those stones west of the Compton line?
A. About three miles and sixty some chains.

XQ. Three miles and three-quarters?
A. About that, I think.

52 XQ. About how far would that put the northeast corner of the Grant west of Black Lake, according to the Walker line? A. Would be about twelve miles.

XQ. Wouldn't it be more nearly thirteen?
A. Compton was 9 miles 66 links. It would be about 12 miles 67 chains.

XQ. Something over two miles and a quarter more than Means notes called for? A. Yes.

Witness said that there are many little errors in the Means' survey.

Q. "And yet you tied to one call being correct over all the others?
A. It is not the only fixed point; crossing the Mora, taking the town which might correspond to Upper Mora, and the monuments in the Estillero valley."

Witness said it was idle pastime to tie to the nearest corner of the grant as so many errors existed in the line, so he deemed the best thing was to tie to the nearest known monument. He described the place he called Canoncito as being quite a number of houses grouped as he has shown on his map. At that particular point there were three or four houses within two or three hundred feet of each other; three or four houses in use and ruins of a number more. He thought it was as much of a town as Cleveland.

The Picuris trail was hard to locate along where the "Eo" stone was found. It is 2.25 chains further south than Means' notes call for. There is an old hole between the river and the blazed line. It might have been caused by drainage off the hill, but witness does not think it was the bed of a river.

The line between the two stones at the Estillero could have been run a chain longer without raising or encountering any difficulty. There is no such sudden rise and elevation as would stop an ordinary surveyor. Forty chains would have put one into the timber where he would have to cut out.

Taking the traverse from the stone back towards Cleve-
land, it runs along the hillside. The line goes up into
53 the mountains. It runs over mountains and timber the entire distance except where it crosses the Raton Canon and that is deep and steep. Witness does not know whether the topography agrees with that given in the Means' notes. The last 34 chains the line does not run through a valley. There is no open country around Upper Mora, (meaning Canoncito.

"Q. At 75 chains he reaches cultivated land. In running 75 chains on this canon does he tie into anything of that kind?

A. In running our traverse up the canyon at 75 chains we did cross cultivated land; we were running up the trail; we were off his line a little bit.

Q. You give as your opinion that he never ran this line?
A. No, I think not.

Q. How did he set the stones?
A. He went over and they showed him where the stones were.

Q. If Means gives in his field notes the courses from his Upper Mora, at 75 chains, cultivated land, at mile and 25 chains house on the left, or 2 miles 30 links trail to Picuris, at 3 miles cross branch up the Rio Mora, 4 miles 25 chains around stony ridge, 4 miles 40 chains around mountain, 5 miles mountain very steep, at 5 miles 28 chains on top of mountain at 5 miles on the north and east edge of mountains, at 6 miles low place in the mountain, at 7 miles enter bottom between the mountains, at 7 miles at place called Estillero, the western boundary abundance of timber; the second notes of Means he reports the topography substantially the same; according to the notes this is correct, and this is the line that was run twice? A. According to the notes.

Q. It is the only point in this line that was run twice?
A. Yes.

Q. And that is the only line with which you are familiar on which the topography of the line from Canoncito up to the point of the Walker stones agrees as you found it on your line?

A. 50% it does where he tells if going up mountains, all that kind of thing."

54 The gap of the mountain is plainly visible from Cleveland and from the whole valley, there is an open space near the gap after one gets way down the hill, that can be seen from Cleveland.

ANDRES GANDERT, called as a witness for the defendant, testified as follows: He is 46 years old and lives in Holman, about six or 7 miles from the Estillero. He has held the positions of County Commissioner and Sheriff. He lived about 3 years at the Canon de los Ratonnes in the vicinity of the Estillero, and three-quarters of a mile from the Estillero when he was 12 or 13 years old. He has also

lived at the foot of the hill that lies north of the Valle de Arriba about 5 miles more or less from the Estillero. Also lived at Tres Ritos, four or five miles from the Estillero. All his life he lived within five or six miles of the Estillero. The Estillero is at the Canon, with the Alamitos at the south end, on the north the Canon Abequesenos. The Rio Pueblo runs through the Estillero. He has known the Estillero all his life and knows of no other place being called by that name.

He has known the place called Canoncito all his life; also knows the Picuris Trail. When he was a boy there was a wagon road from Mora running up towards the Estillero above the Canoncito. It ran up to the last house and fro there on in going to the Estillero, you had to follow the Picuris Trail on horse back.

On cross examination, the witness testified as follows: That as he understood it, the term "Estillero" means cold thing,—a cold place. The Estillero is a cold place,—wind and snow even in Summer. He does not know of any such word in the Spanish. Only the valley was called the Estiller, that is, from the Angustura to the Canon Abequesenos, three miles or so. He knows of no mountain by that name. There is an open space near the summit of the mountain on the east side where the trail winds through in the timber, but that is not called the Estillero. It can be seen from the Valle de Arriba now called Cleveland. Witness admits that he owns stock in the State Investment Company one of the [defendant] in the suit.

PEDRO A. DURAN, a witness called for the defendants, testified as follows: He is 66 years old and lives at Rincon, in Taos County. He lived at Chacon in Mora County
55 at one time when fourteen or fifteen years old. He knows Casimero Pais, knew his father, Josefa Francis Pais, and he knows the Estillero. It is the place called Mora Canon. There is a river running through it that empties into the Rio Pueblo.

The Estillero begins at the Canon Abequesenos. He has known it since 1866 or 1867. His father owned stock at one time and they got into the Estillero and witness would go to hunt them, and frequently traveled the Picuris trail that ran through the Estillero. He saw the "Eo" stone the summer of the hearing. The first time he ever saw the stone was 1866 or 1867. It was pointed out to him by his father. Saw it at different times,—when he saw it this summer it was at the same place as in 1866 or 67. There is a mound

of stones there. He did not examine the stone in the early years to see whether there were any marks on it. Coming from Angostura to Mora it is on the right hand side of the road. Stone is not far from Clemente Maestes' house.

On cross examination, this witness testified that he did not know what Estillero means. The Mountain was called the Estillero. It can be seen from Cleveland. The stone is about 60 or 70 yards from the road upon the hill. The stone was standing up both the times the witness saw it.

Antonio J. Romero, a witness called by the defendants testified as follows: He was subpoenaed as a witness for the plaintiff. He is 82 years old and has lived in the Valle de Ariba. He knows the place called Angostura de los Cabellos. He also knows Casimero Pais and his father, Josefa Francisco Pais. Has known the country around Angostura de los Cabellos and the valley of the Rio Pueblo river since he was seven years old. He knows the Picuris trail and the house where Clemente Maestes lives. Casimero Pais formerly lived there. He knows J. Cordova and was with him and Francisco Pais at the place. Cordova was building a fort. The fort was being built about 500 yards from the house of Clemente Maestes. That was between 1861 and 1866. That place was known as the Estillero in those years. Asked Cordova and Pais why they were building the Fort and was told they were building it on account of the grant line. They told him the mound of stones was over
56 across the river. He did not see the marking on the stone. He never went near the mound. He had been to the place recently with Mr. McPhaul, who had asked to be taken to the mound of stones. He went to the same mound that had been mentioned by Pais and Cordova, to him in 1861 or 1866. He saw the stones often as he went by along the road.

On cross examination he testified that he did not see the mound of stones when he was there in 1861 and 1866, but did see the mound and the stone in it many times thereafter as he passed by. Josefus Francisco Pais merely told him where it was. He saw the marks when he took Mr. McPhaul to the place recently. That was the first time he saw the stone. He pointed out a tree that was the original of the Estillero tree. Witness here made a small sketch showing the location of the stone and identified certain points. He shows the position of the road. The letter M indicates the position of the stones, the letter E the Estillero spring, and the letter F indicates the fort referred to.

'LEMENTE MAESTES, a witness called for the defend- s testified as follows: He lives at the Estillero, has lived re for 15 years. Before that he lived at Santa Barbara miles distant. He knows the Angostura. It is on the er side of his house about 400 yards away. When he s a boy his father had cattle and witness took care of m. Has known the Estillero for fifty years. They would ze in the Estillero, and go along the Picuris trail to Mora. knows the Estillero Spring. It is about 300 yards to the t of his house. There is a mound of stones near the Estil- o Spring and the stone stands in the mound. He saw no er springs but the Estillero Spring. Witness has known marked stones for 35 or 40 years. He has seen the rks but does not know what they are. There is another ne to the south to the other side of the Pueblo River and re is a mound of stones there also. He has known it for ty years. The second mound is about 800 yards above ness' house. On cross examination witness stated that stone is now in the same as when he first saw it, and as he saw it from time to time for 35 or 40 years, he believes it was the same marked stone all this time.

JESUS MEDINO, a witness [caled] by the defendants, tified as follows: He is going on to 70 years of age and es at Chacon up above Mora. Has known the Estillero l the Angustora since he was 20 years old. He knows Estillero Spring. He has seen a stone about 1½ feet h near the spring, saw it from the Picuris trail. He be- es there are marks on it. He first saw it in 1868 or 9. It is about 100 yards from the Estillero Spring. The ntry from the Angostura up to the Canon Abequesenos s always been called the Estillero, never heard of any er place called the Estillero. When he first passed this y the trail to Picuris ran in the same place where the d runs now.

JUAN ANDRES DE LUNA, a witness called for the de- dants, testified as follows: He is 72 years old and has ed in Mora County, in the Valley of Canoncito, since he s 9 or 10 years old. He knows the place called the Estil- o and the Estillero Spring. Has known them since 1874. those years there was a mound of stones near the Estil- o Spring 100 to 150 yards northeast of the spring. The il to Picuris crosses on the upper side and close to the ring. It ran in the same place where the road runs now. hat he knows as the Estillero is the valley of the Estillero.

The Pueblo river runs through it. Never knew any other place called the Estillero.

On cross examination this witness testified that the Alamitos is a part of the valley of Estillero. That is the point where the water is taken to the east. He has heard of the Estillero mountain. It is the mountain looking northwest from Cleveland. He saw the stone in the mound near the spring in 1874, but did not see any marks on it. Saw the mound many times.

On re-direct examination this witness testified that he did not know a mountain called the Estillero. It is a valley. That there was a tree there which was torn down by [lightening], and that it was on account of this tree that it was called Estillero. Casimero Pais as well as Francisco Pais called his attention to the stone.

58 On further cross examination this witness says that Francisco Pais explained to him that Estillero means a splintered tree. This is all he knew about it.

SEGUNDA GARCIA, a witness called for the defendants, testified as follows: He has lived in Holman for 65 years and he is 65 years old. He knows a place called the Estillero. It is on a river called the Estillero. It is the same as the Rio Pueblo. He knows a spring that was called the Estillero Spring. It is in front of the fort where Clemente Maestes lives. There is a mound of stones near the spring which witness has seen. He first saw it over 30 years ago, more or less. The Picuris trail passes by the spring. 30 years ago the trail was along the side of the mountain there. He knew Canoncito 30 years ago. He knows the town of Mora. There was a wagon road at that time from Mora to Canoncito. From there there was a trail that went to Picuris, no wagon road, nothing but a trail.

On cross examination this witness testified that there are different springs in the valley some of which are larger than the Estillero Spring but not called Estillero Spring. The trail to Picuris ran close to the spring. He saw the mound of stones from the trail but did not see a stone sticking up in the ground, never saw any marks on it. Witness never heard of a mountain called the Estillero, but you could see it from Cleveland. All the valley is called the Estillero from Alamitos to Alcahuize.

VINCENT E. JONES, recalled as a witness for the defendants indicated on the map the location of the Estillero spring by marking it with the letter C.

The defendants offer in evidence the plat purporting to show the line run by John H. Walker as a west boundary of the Mora Grant. It is offered only for the purpose of showing the location on the ground of the line that Mr. Walker ran and for no other purpose. It is admitted by the defendants that the Walker survey of the west boundary of the Mora Grant as shown by defendants exhibit H was not approved by the Interior Department.

HEMEREJILDO VIGIL, called as a witness for the defendants testified as follows: Is 72 years old and lives in the county of Mora at Chacon. He has lived at Estillero, which he has known [every] since he was old enough. He was the first settler there. His father used to have cattle there and some stock and witness used to go to the Estillero all the time. He knows the Estillero Spring and a mound of stones thereby. He is not certain, but according to his information he first saw the stones from 1866 to 1868. At that time there was a marked stone in the mound. It was about 100 or 150 yards from the spring near the Picuris trail. He saw the stone several times during those years. He built a house there a little above the spring to the south of it and on the same side from the Picuris trail as the spring, later witness stated it was on opposite side of spring. The ruins of that house are there now. His house was about 200 or 300 yards from the spring. When witness went back there in 1886 the mound of stones was still there, but he did not find the stone that was marked. He saw it again about 2 years ago in the same place. He does not know what the marking on the stone was supposed to mean. He does not remember very well what the mark was, but it was an "o" or a cipher, or something, but witness does not know whether that mound was a land mark, marking any particular piece of land or boundary line.

On cross examination this witness testified that when he settled there in 1886 the marked stone was not there. He examined the mound and looked for that stone and could not find it, but about two years ago the stone was back there again. He does not know where it came from nor if it had been moved. In 1886 the stones were all scattered, but were not scattered when he first saw the mound.

The Estillero extends from the place known as the Angostura to another place known as Los Alamitos. Los Alamitos

is up where the old trail goes over the divide to Mora. It is the place where the waters of the Pueblo River are taken from the mountains in the Mora Valley but the natural water runs to the county of Taos.

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60 JUAN ANDRES DE LUNA, recalled as a witness for the defendants, testified that Manuel Antonio Pais, the brother of Francisco Pais died a good many years ago.

H. C. VILES, called as a witness for the defendants, testified as follows: He lives just above Mora and knows the Estillero. He was at one time a forest ranger in the service of the Government from 1907 to 1914. The last 4 years of his service his headquarters were at Holman. He knows the marked stone at the Estillero. The "Eo" stone is on the north bank of the Rio Pueblo and the other stone is about one-half mile further south. There is a mound of stones south of the river. He knows the blazed tree mentioned in the testimony of Vincent K. Jones. He would say the blaze on that tree was from 40 to 60 years old. He has had experience which enables him by examination to tell the age or apparent age of a blaze on a tree.

On cross examination this witness testified he first went into the country in 1904 and that was after the Walker line had been run. He knew nothing of what might have been called the Estillero or Estillero Spring prior to that time.

VINCENT K. JONES, recalled for the defendants, marked on his map the ruins of the Old Hut, built by Hemerejildo Vigil and indicated with the letters H. V.

Plaintiff's Rebuttal.

G. D. D. KIRKPATRICK, recalled as a witness for the plaintiff, testified as follows: He was in the valley of the Rio Pueblo in the years 1906 and 1910 and again in 1918. He examined the "Eo" stone in the Walker line, the size, markings and relative position with reference to the town of Cleveland. In 1906 he was there four or five days and probably a week in 1910. He traversed the valley from the base of the mountain and ran a line north and south through the stones. The stone marked "Eo" is a standstone 20 inches

rth and south and 8 inches thick, 30 inches above ground
arked "Eo" and on the west W. B. M. G. Running south
om the stone witness descended rocky land and at 7.50
ains found the road in 1906. At 17.90 chains the present
river at 23.75 chains the old bed of the river. Witness
followed it far enough to satisfy him that it was the
old bed of the river. At 28.50 chains the base of the
ountains and 34.48 chains the southern stone. The distance
om the base of the mountain on the north to the base of
e mountain on the south was 21 chains. Continuing south
om the south stone the timber would be reached at about
links or 1 chain. Running south the slope was a very
tle steeper from the stone. Witness ran several miles
rth of the north stone examining Walker's survey and ran
ong the west southwest slope of the mountain gradual as-
nt.

In 4 chains 11 links, where Walker's 19 mile corner was
und, the rise was 20 or 30 feet. Going north from there he
cended 4.2 chains and then commenced to descend until
reached 25.66 chains. The country presented no especial
fficulties. Witness took a photograph of the north or "Eo"
one. The mound of stones with the flag is the place where
e "Fo" stone is. The photograph as offered is United
ates Exhibit 45.

"Q. In his original notes Means states or his corrected
otes, that north from this stone marked "Eo" a pine tree
ears north 3.71 chains and at the base of which he set a
one marked "W. B. M. G." in a mound of stones; this
ound of stones at the base or foot of a high mountain
er which he cannot go, where would a point north 3
ains 71 links of a corner marked "Eo" found by you fall
ith respect to the base of the mountain?
A. It would not fall at the base. It would fall in the same
lation to the mountain that the present "Eo" stone is.

Q. Would it be at the base of the Mountain or up from
e base? A. It would be up from the base."

Witness attempted to satisfy Mean's calls with other
laces in the valley, but could not make them satisfactory
the line from Cleveland is followed. Witness gives the
llowing description of line N. 42° W. from church in Cleve-
nd. (Present town of Cleveland) At 1 mi. 75 ch. 50 lks.
ross stream; at 2 mi. 40 ch. commence to ascend mountain;
ense timber at 4 miles, top of mountain. Descend. At 4 mi.
61 chs. enter cultivated field, that is, open space on
2 mountain slope; at 4 mi. 67 chs. bottom of descent.
Ascend gentle east slope. at 4 miles 68 chs. 50 links.

Adobe house south of line. At 6 mi. 23 ch. 65 lks. top of mountain. Descend. At 6 mi. 73 chs. 15 lks. leave timber; at 6 mi. 75 ch. 65 lks. enter bottom between mountains; at 7 mi. 15 lks. leave bottom land, ascend NW slope; at 7 mi. 8 ch. 65 lks. I am on top of little spur extending SW. Descend. The solid line on Government's Exhibit 30 drawn from the church in Upper Mora now Cleveland to the location of the Estillero by Means, north 42 degrees west 592 chains, 30 links, represents the direct line across the mountains.

The figures below in black are witness's notes showing what he found along that line. The red represents Mean's topography. In running that line witness passed through a place called Cannoncito, marked with a cross. After leaving Canoncito, the town of Canoncito consists of several scattered houses along the creek, [witness] line passes slightly south of the group of houses; he visited the place in the summer of 1918. A course N. 42° w. would go straight up over the mountains at 10 chs. would ascend rapidly. A line N. 42° W. Would run straight up over the mountains. The main divide cannot be seen from Canoncito. There are mountains between.

Witness has been to the place where the waters of the Rio Pueblo and the Alamitos are brought through to the Mora Valley. It is a part of the gap. It is an open space partly visible from Cleveland. This low place on the divide, at the gap, extends east. The country is open and descends into an open basin or flat saddle between the divide and the mountain to the east. This open, low, place is quite large, being half or three-quarters of a mile north and south. In the east, some cultivation, people living there. The trail from Picuris passes through it. The open space continues to [to] where the trail passes over the mountain into the Pueblo valley, The distance from Cleveland to where the open space begins is 4 miles 61 chains or 254.95 chains due west from Cleveland.

Witness has computed the distance between meander corner 13 on the north boundary to the town of Cleveland
63 on an east and west line and it is 498 chains 45 links. Adding that to the westings from Cleveland and the 94 chains 71 links the east and west distance between meander corner 13 on the ground and the theoretical corner will give a total of 10 miles 48 chains 9 links. That is to say, the distance of the bare spot in the mountains which is visible from Cleveland is a due easterly direction to meander corner 13 located by Means is 10 miles 48 chains 9 links. From witness' examination of the stone adopted by Walker and the topography in the vicinity in his judgment the

tones are not in any way related to the Means' survey. Ie does not believe that Means set those stones.

On cross examination this witness testified that the actual istance as called for by Means from the actual location on ie ground of meander corner 13, 10 miles, 40 chains and 54 nks would place the northwest corner of the grant somehat west of the Compton line, but it would still be about 50 chains east of the Walker line, Witness has examined ie map of the Estillero prepared by Mr. Jones and found to be substantially correct. Witness was asked to explain is statement that there were two other places in the Rio ueblo valley that answered to Means' topography. He lentified a point slightly east of the point marked "Stover's Post", where he sai: the distance agreed between the asis of the mountains very well. He drew a line from this oint "k" as the north terminus to a point marked "x" as ie southern terminus of the line. Further cross questioned s to the agreement of this point, witness said that according o the map the Picuris trail at this point is to the south of ie main branch of the Pueblo river as it existed in 1906, ut that Means' notes calls for the Picuris trail north of the ver at this point. So that the topography as indicated on his map does not agree with the topography called for by leans at this point as to the location of the Picuris trail. Vitness indicated another point identified by a line running rom k9 to k2 on the map as a second point where his toography agrees with Means' notes and drew a line between iese notes. But witness admitted that at this point both stones would have to lie some little distance inside of the timber—the north stone in the open timber and the south stone would be about 100 feet inside the mber. Also at this point, the Picuris trail would be on the uth side of the river while Means places it on the north de. Further cross questioned, witness answered:

"XQ. Can you pick me out on this map a single point at hich all the topographical features called for by Means ill be found other than the line between the two monuents as they are on the ground?

"A. Don't believe I could pick a place on this map, it oes not agree here.

"XQ. You are to exclude that point and considering that ap correct.

"A. I don't believe I can find a place where the topography on the ground would correspond with the topography ecified by Means in his corrected notes, not his original otes.

"XQ. By his original notes you mean the notes when he didn't set any monuments?

"A. When he describes as running to low places.

"XQ. You don't find anywhere in the valley any marked monument with the locations called for by Means except where the monuments are shown on the map?

"A. I did not.

"XQ. Just to make it plain: At the point which I have marked with W is northwest corner of the grant after Walker's line was extended? A. That's correct.

"XQ. The point I am marking with M is the northwest corner of the Grant as it would be if the distance given by Means is measured from the actual location of M. C. 13 on the ground? A. That's correct.

"XQ. That is the only point at which there is an M. C. 13 on the ground?

"A. It is the only point; that is the theoretical position.

"XQ. This point that I am marking with C is the northeast corner of the grant according to the Compton Survey?

"A. That's correct."

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65 A. E. COMPTON, recalled as a witness for plaintiff, testified as follows: He was in the vicinity of Cleveland in August, 1918. He knows the place where the old trail to Picuris crosses the mountain into the Pueblo valley. It is visible from the front of the old church in Cleveland. The most prominent place in the gap in the mountain is on a course north 46 degrees 5 minutes west from Cleveland. Witness took a photograph of the gap in the mountain from Cleveland and marks on it a cross where the Picuris trail passes through. The character of the country just east of the place is rather open country. It is plainly visible from Cleveland. Witness took a photograph of the bare spot at the place and makes a cross at the place of the Picuris trail. These two photographs offered as Government's Exhibits 46 and 47. The most southern point in the open space in the photograph is visible from Cleveland. The other low places are obscured by high mountains. Witness made an attempt to run Means' traverse line south from Upper Mora towards the southeast corner of the grant. He started near the Romero house, there being 2 or 3 houses in that vicinity on the north bank of the Canoncito River. He ran two of Means' courses and attempted to find the point that would be the right distance between the two rivers. The third course would have taken

witness over high hills. He did not run through the canon. Means mentioned two rivers. He found the distance too great to satisfy Means' notes.

On cross examination, this witness testified as follows: He had not been over this bare spot in the mountain west to the Pueblo River Valley, but he had the impression that it was not more than one-half mile from where the waters were diverted and brought across. There is no river there called the Pueblo River. There is a river at the bare spot almost as large as the Pueblo was at the Walker line when he was there, it runs eastward.

Q. Would you attempt to give the impression that Means called for the Pueblo River to run east that he was re-
66 ferring to this river that you say runs east.

A. I have had the impression that Means might have been confused in the names of the rivers.

FATHER CLAUDIO BALLAN, called as a witness for the plaintiff testified as follows: He lives at Las Vegas, New Mexico. Before that he lived at Mora. First from July, 1893, to May 1894, then from October, 1901, until January 7, 1917. He was in charge of the Parish at Mora. When he lived at Mora he knew a place known as the Estillero. According to his knowledge it is from the top of the mountain running down, he does not know exactly how far. He understands it runs four or five miles. It began at the top of the mountain. From Cleveland there is a trail which goes through a small village that used to be called Abequesenos where there are about 7 or 8 houses. It goes where the divide is and also through the gap.

On cross examination this witness testified that he knows the Alamitos. It is the place between Raton and the top of the mountains. From the top of the mountain down to the Raton Canyon it is called Alamitos. He has heard the term Estillero applied from over the top as including the Alamitos and the whole valley beyond Angostura. The Government offered in evidence a photograph of the west side of the stone north of the Pueblo River on the west line, marked Exhibit 48. Also a photograph of the east side of the same stone marked Exhibit 50.

BLAS GALLEGOS, called as a witness for the plaintiffs, testified as follows: He is 58 years old and has lived for 52 years in Mora. He knows the place in that vicinity called the

Estillero. He described it as follows: "Going into the Canoncito, one goes up on top. There is quite a gap which is the top of the hill. That is where he called the Estillero."

That is the place he knows as the Estillero. They used to tell him before that that [is] was the Estillero. A trail runs through it which is the trail to Picuris. The Estillero extends on the other side to the Summit and some people say it runs away down below.

67 On cross examination this witness testified that the first place reached on the top of the hill is called by many the Alamitos, but according to the witness that is where the Estillero starts.

PEDRO BERNAL, recalled as a witness for the plaintiffs, testified as follows: He lives near Cleveland, in Mora County, at Canoncito. He has lived there all his life. He knows the country along the Pueblo River and he knows the place west of Cleveland called the Estillero. It is the valley right above the mountains. As one goes up on the mountain on top of the hill, from there on is where the valley of the Estillero is. It extends about a mile, so far as witness knows, down to the Pueblo River. He knows of no spring in the valley called the Estillero Spring.

On cross examination, witness stated that as you go on top of the hill, the first valley that you come to is the valley of the Alamitos, also known as the valley of Father Guerin, and later the valley of the Branches, and below that you come to the Estillero, where the Canon of the Caballos meets, and the Alamitos comes together. That is where the Estillero begins, and from there the Estillero runs to the Angostura. Where Clemente Maestes lives is also known as the Angostura. That is the commencement of the Angostura. Witness understands the Angostura to run from the Alamitos down to the Clemente Maestes house. The Canon Ratones runs into the Estillero, and the Estillero extends from the point where the Canon Ratones enters it up the canyon towards Mora. It extends up to the Alamitos, right where the Alamitos comes in. Beyond the Alamitos another valley commences. The Estillero extends as far below the Canon Ratones as the Alcahuizes. The Alcahuizes is a point located opposite the point where the Canyon Ratones comes into the Estillero Canon, and about 60 varas (yards) down to the river towards Picuris.

AGAPITO ABEYTA, recalled as a witness for the plaintiff, testified as follows: He lives at Canoncito and has lived there for the last 26 years. Was born about 6 miles from Mora. He knows the place west from Cleveland known as the Estillero. He described it as follows: "After I
68 started from my home due west after I climb out to the divide of waters, there I call the Estillero." The Estillero is reached from the east side by climbing up the Picuris trail to the divide, the other side of the mountain,—that is the Estiller. It extends down the Pueblo river to Angostura south of the junction of the Canyon Ratones.

On cross examination, witness stated that as you go to the top of the trail and get on top of the hill, the first place you come to in the valley is the valley of the Alamitos, formerly called the Valley of Father Guerin, and also where the Branches used to live. Just below this the Alamitos river comes down, and another branch of the river comes together. That is near the Canon of the Alcahuizes, opposite and at that point the Estillero begins. The Alamitos is a part of the Estillero. From the Canyon of the Abequesenos, the Estillero goes down to the Angostura de los Caballos.

The plaintiff here offered a copy of the letter from Mr. Catron dated July 1, 1871, presenting the copy of the plat of Survey of the Mora Grant and asking for its approval. The defendant admits that such a letter was written and objects to the admissibility of the evidence for the reason that whether the grant owners were satisfied or dissatisfied, they were bound to take whatever was in the patent.

The following exhibits were introduced in evidence.

Plaintiff's Exhibits

Field notes of the surveys made of the Mora Grant by Thomas Means, in July and August 1861, and in November 1861.

The patent issued for the Mora Grant, dated August 15, 1876, marked Plaintiff's Exhibit No. 1.

The plat accompanying the patent, marked Plaintiff's Exhibit No. 2.

Map prepared by Owen L. Wood, showing different surveys of the Mora Grant, marked Plaintiff's Exhibit No. 25.

Map by Kirkpatrick, marked Plaintiff's Exhibit No. 30.

Two photographs, Marked Plaintiff's Exhibits No. 46 and 47.

69 Defendant's Exhibits

Map by Jones, marked Defendants Exhibit No. A

Photograph of blazed tree, marked Defendant's Exhibit C.

Runner map showing the line between Estillero Monuments, marked Exhibit E.

Plat showing relative locations of various surveys, marked Exhibit G.

It is hereby stipulated that the foregoing statement, including the exhibits described at the end thereof, is a full and correct statement of all the evidence necessary to a determination of this cause on appeal, and it is further stipulated that the originals of plaintiff's exhibit No. 30 and defendant's exhibit A may be certified up to the appellate court and referred to on the hearing of this cause therein.

S. W. WILLIAMS,
Special Assistant to the Attorney General.
Solicitor for the Plaintiff.
S. B. DAVIS, JR.
A. T. ROGERS, JR. & C. W. G. WARD.
Solicitors for the Defendants.

(Approval of statement of evidence by District Judge.)

The foregoing statement of the evidence is hereby settled, allowed and approved, and the above stipulation is also approved this 28th day of April, 1922.

COLIN NEBLETT,
United States District Judge.

(The opinion of the District Court, filed November 11, 1921.)

70 This is a suit brought by the United States of America against The State Investment Company and Edward B. Wheeler to quiet its title as against the defendants to a strip of land about 3½ miles in width and extending north and south about 30 miles, west of what is claimed by the Government to be the western boundary of the Mora Grant, and described in its complaint as the Compton line.

The defendants deny that the Government is the owner of the strip of land or any part of it described in its complaint, and allege that they are the owners of the same, and pray in their answer that their title to the same be quieted in them as against the United States of America,

The defendants claim that the lands in controversy in this suit are within the limits of the grant of the patent to the Mora Grant issued by the United States, and that the defendants are now the owners of the land described in plaintiff's complaint, title to which is sought to be quieted by the Government in it.

The Mora Grant was confirmed by an Act of Congress of June 21, 1860, 12 Stat. 71), and thereafter the Government under contract with Thomas Means caused a survey of the Mora Grant to be made, and the field notes and plat of survey of the same made by Thomas Means were approved by the Surveyor General of New Mexico, and a patent of the United States was issued thereon August 15th, 1876, for Mora Grant in accordance with the field notes and plat of survey made by Thomas Means. There is no attack made as to the validity of the patent for Mora Grant. The question to be determined in this case is whether or not the land described in plaintiff's complaint was included within the grant of the patent from the United States to the Mora Grant. The Government contends that it was not included in the patent, that the true west boundary of the Grant called for in the patent is a line established by Alonzo E. Compton in the year 1909, which they claim is marked on the surface of the earth in substantially the same place as called for by the courses and distances in the patent
71 from the United States. The defendants contend that the true west boundary of the Grant as established by Means when making his official survey of the grant and as called for in the patent is some 3½ miles west of the Compton line on the Pueblo River at a place known as and called the Estillero.

The Estillero, as shown by the evidence, is a place in the valley of the Pueblo River extending down the valley of the Pueblo River from the Canon de los Abequesenos or Canon de los Ratones on said River to the Angostura de los Caballos along said River for a distance of about 2½ miles. The Estillero was named in the document giving juridical possession of the grant as the west boundary of the Grant, and Means in his instructions for making a survey of the Mora Grant was directed to establish the west boundary of the Grant as the Estillero.

In the approved field notes introduced in evidence it appears that Means in making his survey did not establish on the ground the northwestern corner of the Mora Grant, but determined the same by triangulation and calculation; according to his field notes the nearest point reached by him to the northwest corner was at a place designated by him

as M C 13 south of Black Lake 10 miles 40 chains 54
from the northwestern corner of the Grant. He did not
over or mark on the ground the line on the western b
dary of Mora Grant at any other place except the p
located by him as the Estillero.

Means located the northwest corner of the grant and
location of his monuments at the Estillero by run
traverse lines from his M C 13 to the place selected by
as the point for the Estillero, and also located the south
corner of Mora Grant by running a traverse line to
northwest corner of the Las Vegas Grant, which was an
tablished monument on the south boundary of the M
Grant.

That portion of the patent describing the western bo
dary of the Mora Grant through the Estillero is as follo

"Thence South from said point for Northwest cor
At thirteen miles seven chains forty-one links
72 course, or one hundred and three miles, forty-th
chains sixty-nine links from beginning, a stone th
by nineteen by eleven inches in size in large mound
stone and marked W B M G and on west side Eo, f
which mound an aspen tree twelve inches diameter be
North seventy-four and one half [degree] East one h
dred and seventy links distant which tree bears cut
it the letters W B M G and the word Estillero and f
which mound a pine tree seventeen inches diame
bears North three hundred and seventy-one links
tant and which tree bears cut in it on the east side
letters W B M G and the word Estillero and at the
side of which tree is a stone twenty by twelve by th
inches in size in a mound of stones and marked W B
G and the word Estillero and at the East side of wh
tree is a stone twenty by twelve by three inches in
in a mound of stones and marked W B M G. At th
teen miles nine chains seventy-one links a trail
Picuris bearing Northwest. At thirteen miles twen
five chains fifty-nine links the Pueblo River bear
Northwest and south east. At thirteen miles forty-
chains ninety-one links at foot of high mountain
stone eighteen by twelve by five inches in size in
mound of stones and marked W B M G At thirty-th
miles thirty-three chains twenty-nine links on course
one hundred and twenty-three miles sixty-nine cha
fifty-seven links from beginning, Southwest corner
the Mora grant, a stone twenty by fourteen by
inches in size in a mound of stones and marked S W

M G and standing on the edge of a high mountain on left bank of the Sapello river one hundred and fifty two links North of the stream."

The approved field notes of Means' survey of the west boundary of Mora Grant, which were introduced in evidence, show the setting of three stones, the crossing of the Picuris trail, the call for the Pueblo River, the call for high mountains, and the call for bearing trees in the valley
73 of the Pueblo River at the place at which he located the Estillero, this being the controlling call in the patent for the west boundary of the Mora Grant, it is necessary to determine the point at which [Mean] actually placed the marked stones on the Grant.

The evidence conclusively shows that the stone marked W B M G and Eo, (called for in the patent, and the center stone) and the stone south of the Pueblo River at the foot of the mountain are now in substantially the same place at which they were placed by Means as called for in his field notes. This was established by the evidence of old men, some of whom have known the Eo stone in its present location since the year 1866; other witnesses have known of this stone in its present location for thirty or forty years. In the year 1902, J. H. Walker, a Government surveyor, sent to establish the west boundary of the Mora Grant, found the Eo stone and the stone placed by Means south of the Pueblo River at the foot of the mountain in their present location. The testimony of J. H. Walker is to the effect that the stones found by him were marked as described in the patent, that they were the correct distance from the Picuris trail, and from the Pueblo River, as called for in the patent and field notes of Means, that while the bearing trees from these monuments, called for in the patent and field notes, could not be found, the location of the stones corresponded with the topography of the country called for by Means. The two monuments found by Walker are in a north and south line; the monument north of the Eo stone, called for in Means' field notes and the patent, was not found by Walker, but the same was found some years afterward broken, and in a mound of stones in the locality of the Eo. stone.

It is conclusively established by the evidence that the west boundary of the Mora Grant called for in the patent was established by Thomas Means when making his official survey at a point on the Pueblo River at the place where the monuments are now found in place and claimed by the defendants to be the west boundary of the Mora Grant.
74 It is the contention of the plaintiff in this case that if the monuments were set by Means on the Pueblo River

as the west boundary of Mora Grant that the same were set at random. I cannot agree with this contention. The evidence shows, and it is admitted by both sides in this case, that the courses and distances of Means' traverse from M C 13 to the northwest corner of the Las Vegas Grant cannot be run out on the ground and follow the calls for natural objects and the topography of the country over which he claims to have run. These courses and distances were either incorrectly given in his field notes when he ran the traverse line or else were altered by him after making the same.

The evidence as to the present location of Upper Mora is unsatisfactory. I cannot say from this evidence that the present town of Cleveland is what was known in 1861 as Upper Mora. The only conclusion to be reached from the evidence on this point is that all of the upper valley was known as Upper Mora, in which there were several small settlements. Taking Means last bearing for a permanent object before reaching what he called Upper Mora, a tie on the course was made to the old court house in Lower Mora, which is now standing, and which he reports as bearing S. 50-¾ E. and distant 155 chains.

The evidence shows after locating this point, at which he tied to the old court house in Mora on the course on the ground and following the courses and distances given by Means by changing his course from southwest to northwest, "S. 64° W. 206.25 chains," changing 64° to 46°, following this changed course they ran through the little town of Canoncito, which is probably the place that Means designated as Upper Mora.

A line running from Canoncita for the distance and on the course given by Means in his field notes from Canoncito to the Estillero monument will reach a point within 10 chains of the present location of the Estillero monument. A line run from Canoncito to the Estillero monument on the course given by Means in his field notes passes over mountains and country which in the greater part corresponds to the
75 topography of the country which Means states he ran over between these two points.

I appreciate that a bearing for a permanent object taken by a surveyor on a course is not entitled to much weight in determining the correctness of a portion of a survey, but in a case of this kind where it is conceded that the traverse lines run by the surveyor in an effort to establish the west boundary of the Mora Grant are erroneous and incorrect, if the last main call, taken before reaching the place sought

be located, if the place from which the bearing is taken located upon the ground, and then following the courses d distances given by the surveyor from such point, and e courses and distances as run check up with the calls for rmanent objects and the topography of the country, and e distance is approximately correct to the place where it conclusively shown that the surveyor called for and placed numents for the west boundary of the Grant, this evi- nce should be sufficient to convince the Court that the rveyor actually ran (or computed by triangulation or cal- lation) the distance to the place at which he placed the nountains] on the Pueblo River for the west boundary of e Mora Grant.

It is the contention of the Government that Upper Mora, lled for by Means in his field notes, is the present town Cleveland. If this is shown still the distance to the west undary of the Mora Grant from Cleveland as called for Means would place the west boundary of the Mora Grant considerable distance west of the Compton line. There ere no monuments found on or near the Compton line, nor any claimed west boundary of the Mora Grant except the Estillero.

The controlling call in the patent for the west boundary the Mora Grant being established from the evidence on e ground, that is, natural objects—the Estillero, the trail Picuris, the Pueblo River, and the permanent monuments, one marked Eo on one side and W B M G on the other, one marked W B M G and stone south of the Pueblo iver marked W B M G, all now being located in the rel- ative positions called for in the patent, these calls for natural objects and permanent monuments on the ground definitely located, they must control as the est boundary. This being established I cannot find any ther facts and circumstances in this case which would nstitute an exception to the general rule of law that urses and distances must yield to natural objects and ermanent monuments called for in the patent.

I therefore conclude that the true west boundary of the lora Grant is a north and south line drawn through the nonuments, at the Estillero on the Pueblo River, set by Thomas Means in 1861, and found in place on the ground y J. H. Walker in 1902 and now in place on the ground. nd the United States, by its patent for the Mora Grant, onveyed all of the lands west of the so-called Compton ine to a north and south line through said monuments o a point where said north and south line intersects the orth boundary of the Mora Grant and on the south to a

point where said north and south line reaches the Sapello River, and the United States has no right, title or interest in said land.

The defendants in this case are the owners of the land in controversy in this suit and are entitled to a decree against the plaintiff quieting its title to all of such lands, it having been stipulated in this case that The State Investment Company is the owner of all that portion of the land in controversy herein north of the Fifth Correction line and defendant Edward B. Wheeler is the owner of all that portion of the land in controversy in this suit south of the Fifth Correction line, said defendants are entitled to a decree of this Court quieting their title to that portion of the lands owned by each of them.

COLIN NEBLETT,
U. S. District Judge.

To all of the foregoing findings and conclusions plaintiff by George R. Craig, United States Attorney for the District of New Mexico, excepts.

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77 (Decree, filed and entered of record November 14, 1921.)

This cause came on to be further heard at this term, and for entry of final decree, the same having heretofore been tried and argued by counsel for said respective parties, and duly submitted,—and the court having heretofore made its findings of fact and conclusions of law, which were filed in the above entitled cause as of November 11, 1921, and said parties now appearing by their respective counsel, thereupon and upon consideration thereof, it is ordered, adjudged and decree as [follow]: viz:—

1. That the United States of America, Plaintiff in the above entitled cause, has no right, title or interest in or to the land described in the complaint in said cause, and hereinafter more specifically described.

2. That the defendant, the State Investment Company, is the owner of that portion of the following described tract of land lying north of the fifth correction line, and that defendant, Edward B. Wheeler, is the owner of that portion of the said described tract of land lying south of the Fifth Correction Line, and that the title and estate of the said The State Investment Company and the said Edward B. Wheeler, respectively and severally, in said respective portions of the said described land and real estate, which is better described as follows, to-wit:

That certain tract of land and real estate, situate, ying and being partly in the County of San Miguel, artly in the county of Mora, and partly in the County f Taos, State of New Mexico, and bounded and de- cribed as follows, to-wit:— on the west by a straight ine running due North and South through the Estillero nd through the monument in said Estillero located and stablished by Thomas Means, C. E. in the year 1861 s the western boundary of said Mora grant, the said western boundary being the line re-established by John H. Walker in the year 1902; on the north by the south boundary line of the Ranchos del Rio Grande Grant; on the south by the Sapello River; and on the ast by the Compton line, being the line located by one, Alonzo E. Compton, in or about the year 1909.

nd the same are hereby established against any and all rse claims of the said The United States of America, tiff herein; and that the said plaintiff is hereby barred forever estopped from having or claiming any right, or interest in or to the said described land, real estate premises, or any part thereof, adverse to the said de- ants, or either of them; and that the said defendants' and estate, in fee simple, in the said described land real estate herein decreed to them, respectively, be and same hereby is forever quieted and set at rest; Provided, ever, that this decree shall be subject to the terms and litions of that certain stipulation between the parties to above entitled cause, dated January 23, 1918, and filed aid cause on January 24, 1918, a certified copy of which ulation is hereto attached marked Exhibit A and made rt of this decree.

o the foregoing decree plaintiff excepts.

ated and entered this 14th day of November, 1921.

COLIN NEBLETT,
United States District Judge.

Exhibit "A"

(Certified copy of stipulation as to certain corre- ndence.)

Filed in the U. S. District Court on January 24, 1918.)

Whereas, on March 2nd, 1917, the defendant herein en- d into a certain agreement with the Department of the erior of the United States for the protection of claimants er the public land laws and under contract with and nits from the Forest Service of the United States upon

the strip in dispute between said parties as described in the complaint herein, in the event such disputed strip or any part thereof should be finally adjudged to be a part of the Mora Grant, which said agreement or stipulation was evidenced by a letter from The State Investment Company and E. B. Wheeler, to the Honorable A. T. Vogelsang, First Assistant Secretary of the Interior Department of the United States, said letter being dated March 2nd, 1917, and being as follows, Namely:

"Las Vegas, New Mexico,
March 2, 1917.

Hon. A. T. Vogelsang,
First Assistant Secretary,
Interior Department,
Washington, D. C.

Dear Sir:

Your letter of Feb. 26, D -29883, addressed to Stephen B. Davis, Jr. has been referred to us.

We note your statements regarding settlers as follows:

> 'You suggest that the grant owners should not be required to recognize the claims of persons who have never been on the land, and whose only claims to it are based upon the fact that they have applied to the United States. The Department, of course, did not intend that its stipulation should be operative in any case where a settler or entryman failed to comply with the law; that is, to establish and maintain residence in the form and manner required by homestead law. But it certainly cannot agree to disregard the claims of
80 persons who in good faith have been allowed to make entry upon the lands and where the time within which such [entryment] are required to establish residence has not yet elapsed.'

From the foregoing we gather that we are in practical accord as to the attitude to be assumed toward settlers on this disputed strip, and that the persons entitled to protection under the proposed stipulation, without having actual settlement or occupancy at this time, are those 'who in good faith have been allowed to make entry upon the lands and where the time which such entrymen are required to establish residence has not yet elapsed.' Construed in this way, we are willing to accept the stipulation you proposed.

We also note the proposed change in the stipulation by the omission of certain words affecting the Santa Barbara

nber contract, and your construction of the effect of their
ission. Our construction agrees with yours, and we also
ree with and accept the statement contained in your letter
February 10, 1917 to Edward B. Wheeler, as follows:—

'With respect to the agreement between the Santa Barbara Company and The State Investment Company, the Department does not regard that as a proper part of a stipulation between your companies and the United States, and does not understand that the form of stipulation proposed by the Department would modify or interfere with any arrangement said companies may have made between themselves with respect to the continuing of the cutting of timber or the payment therefor, if the land involved should be determined to belong to the grant,'

nd in this connection we may state that The State Investment Company has arrived at a new understanding with he Santa Barbara Company providing for the continued cutting by it and for payment therefor, if the timber is finally found to belong to The State Investment Company, and we understand that the language above quoted applies to such an agreement, and that The State nvestment Company is free to enter into it.

Based upon the construction above set out we believe hat we can meet the wishes of the Department as to the nstitution of the Proposed suit, and we therefore agree as ollows:

A suit is to be instituted by the United States in the United States court for the district of New Mexico, in the nature of a proceeding to quiet title to the strip of land now in dispute, lying west of the so-called Compton line, which has been adopted by the land department as the west boundary of the Mora grant. The undersigned will be made defendants to that proceeding, as the only claimants of the land under the Mora grant, and we will waive service of process, appear and do all in our power to obtain its speedy determination.

We agree not to molest any bona fide settler on the disputed tract who holds under patent from the United States or under entry allowed by the Department of the Interior prior to this date, or who may hereafter make entry of land within said strip listed by the Secretary of Agriculture with the Secretary of the Interior, upon applications heretofore made, to be declared open to settlement and entry under the homestead laws of the United States; it being understood and agreed that no further application for list-

ing of land within the said strip will be examined by the Secretary of Agriculture with a view to further listings.

We also agree that the timber exchange contract between the United States and the Santa Barbara Tie and Pole Company, and any timber sale contracts with the United States upon said strip of land, may be consummated in accordance with the terms thereof and the regulations governing the occupancy, use, protection and administration of the
82 national forests, and that in accordance with the said regulations the Forest Service of the Department of Agriculture may make such small sales (both commercial and at actual cost), and grant such free use of timber, as may be necessary to meet purely local needs, and may continue to administer and protect said strip of land and issue permits for grazing or any other use authorized by said regulations which will not impair the ultimate value of the land. We further agree that, in the event said strip of land shall, as a result of said suit, be found to be within the limits of said grant, the holders of such permits shall remain undisturbed in their possession until they have had ample notice and opportunity to remove their crops and improvements, and reasonable opportunity also to be allowed the United States within which to remove any existing improvements on said strip of land, and that the receipts on account of such sales or such permits, less the actual cost of administration by the government, shall be paid over to the undersigned, in accordance with the provisions of the act of March 4, 1907, (34 Stat. 1256) and March 4, 1911 (36 Stat. 1235). but no payment of refund will be made to the undersigned on account of sales at actual cost, or any permit issued free of charge.

Nothing in the foregoing shall apply to the claimants of the Ranchos del Rio Grande grant, the lines of which are claimed to conflict with the Mora Grant. Our agreement as to settlers will be carried out by the making of quitclaim deeds or in such other manner as may be found to be best adapted to the protection of their titles, in event that the said lands claimed by them shall, as the result of said suit, be found to be within the limits of the grant.

By proper action of the government authorities having jurisdiction, the lands in dispute are to be withdrawn from further entry of any kind until the final determination of the litigation, and, except by consent of the undersigned, no further timber cutting is to be allowed under contracts with the government. This does not apply to the existing
83 contract with the Santa Barbara Tie and Pole Company, as to which there is an understanding between

t company and the State Investment Company, so long their agreement remains in force. The Secretary of the erior shall have exclusive authority to determine, under s stipulation, the good faith of and compliance with law any public land claimant entitled to protection by the ms hereof.

Trusting that the foregoing may meet the wishes of the partment, and may result in a speedy determination of dispute, we remain,

Very respectfully,

THE STATE INVESTMENT COMPANY,
By GEO. A. FLEMING, President.
EDWARD B. WHEELER."

And whereas, the terms and conditions as set out in the ter aforesaid were accepted by the said Alexander T. gelsang, First Assistant Secretary of the Department of e Interior of the United States, by letter dated March 10, 17, which said letter is as follows, namely:

"Department of the Interior

Washington,
March 10, 1917.

29883

r. Stephen B. Davis, Jr.,
East Las Vegas, New Mexico.

ear Mr. Davis:

I am in receipt of agreement signed by the State Invest- ent Company and Mr. Edward B. Wheeler, with respect the matter of the west boundary of the Mora Grant, New lexico.

In accordance with the understanding heretofore reached, ne matter will be taken up at once and presented to the ttorney General of the United States for his consideration nd action.

Very truly yours,

ALEXANDER T. VOGELSANG,
First Assistant Secretary."

4 Now, therefore, it is hereby stipulated and agreed by and between the parties to this cause that all and ingular the terms and conditions set out in the correspond-

ence aforesaid constitute an agreement and stipulation between the parties hereto and are binding and obligatory upon them.

Dated, January 23, 1918.

S. BURKHART,
United States Attorney for the District of New Mexico.
THE STATE INVESTMENT COMPANY,
By S. B. DAVIS, JR., Its Attorney.
EDWARD B. WHEELER.

United States of America
District of New Mexico. } SS:

I, Wyly Parsons, Clerk of the District Court of the United States for the District of New Mexico, do hereby certify that the above and foregoing is a full and true copy of the stipulation filed in my office January 24, 1918, in said cause, as appears from the files and record of my office.

Witness my hand the seal of said court, at Santa Fe, in said District, this 14th day of November, A. D. 1921.

WYLY PARSONS,
Clerk.

(Seal—U. S. Dist. Court)

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85 (Petition for Appeal, Filed April 18, 1922.)

The above named plaintiff, the United States of America, feeling itself [agrgrieved] by the decree made and entered in this cause on or about November 14, 1921, does hereby pray that an appeal may be allowed from the said decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specifically set forth in the Assignment of Errors which is filed herewith

S. W. WILLIAMS,
Special Assistant to the Attorney General.
Solicitor for Plaintiff and Appellant.

(Assignment of Errors on Appeal, filed April 18, 1922.)

1. The court erred in holding that the line established by Deputy Surveyor John H. Walker in the year 1902 constitutes the west boundary of the Mora Grant, as run by Deputy Surveyor Thomas Means in the year 1861.

2. The court erred in not holding that the line re-established by Deputy Surveyor Alonzo E. Compton in the year 1909 constitutes the west boundary of the Mora grant as surveyed by Means in 1861.

3. The court erred in refusing to admit in evidence the surveys of Fractional Townships 18 and 19 north, Range 14 east, made by United States Deputy Surveyors in 1882 showing the closings of the public land surveys on the west boundary of the Mora grant, and in refusing to admit the surveys of other townships showing the closings of the public land surveys on other boundaries of the grant.

4. The court erred in refusing to admit in evidence
86 decisions of the Commissioner of the General Land Office and the Secretary of the Interior dated October 28, and November 6, 1907, [respectfively], and later decisions holding that the west boundary of the Mora grant was through a point along the line run by Deputy Surveyor Compton.

5. The court erred in holding that the defendants are the owners of the land in controversy.

6. The court erred in not holding that the plaintiff, the United States of America, is the owner of the land in controversy.

Wherefore, the plaintiff prays that the decree be reversed, and for such other further and different relief as it may in equity and good conscience be entitled to.

S. W. WILLIAMS.
Special Assistant to the Attorney General.
Solicitor for Plaintiff and Appellant.

(Order allowing Appeal, filed and entered of record April 18th, 1922.)

It appearing that the above-named plaintiff has heretofore filed its petition for an allowance of an appeal and concurrently therewith its assignment of errors,

It is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the decree in said cause made and entered on November 14, 1921, be, and the same is hereby allowed to the said plaintiff.

Dated April 18, 1922.

COLIN NEBLETT,
United States District Judge.

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87 (Notice of election by the United States as to Printing of record.)

The united States of America having appealed from the decree of said court, entered against the plaintiff, to the United States Circuit Court of Appeals for the Eighth Circuit, hereby gives notice that it elects to take and file in the said appellate court to be printed under the [superivison] of its Clerk under its rules a duly authenticated transcript of such portion of the record as may be duly settled and indicated under Rule 75 of the Rules of Practice for the Courts of Equity of the United States.

Dated this 20th day of April, 1922.

S. W. WILLIAMS,
Special Assistant to the Attorney General
Solicitor for the plaintiff.

Received a copy of the above and foregoing notice this 20th day of April, 1922.

S. B. DAVIS, JR.,
A. T. ROGERS, JR., and
C. W. G. WARD,
Solicitors for the Defendants.

(Praecipe of plaintiff for transcript on appeal, filed April 28, 1922.)

To the Clerk of the above entitled Court:

You will please prepare and duly authenticate the transcript of the following portion of the record in the above-entitled cause for the appeal of the said plaintiff heretofore allowed herein to the United States Circuit Court of Appeals for the Eighth Circuit, in accordance with equity Rule 76.

1. The bill of complaint.

2. The answer of the defendants.

3. The reduced statement of the evidence, with the exhibits described at the end thereof.

88 4. The opinion of the District Court.

5. The final decree entered November 14, 1921.

6. The petition of the plaintiff for the appeal.

7. Assignment of errors upon which the petition for appeal is based.

8. Order allowing appeal.

9. Plaintiff's notice of election as to the printing of the record.

10. This praecipe.

11. The original [citiation] showing service.

You will also please certify to the Circuit Court of Appeals the following original exhibits in the case;

Map by Kirkpatrick of Plaintiff's Exhibit 30 and map by Jones of Defendant's Exhibit A.

S. W. WILLIAMS,
Special Assistant to the Attorney General.
Solicitor for the Plaintiff.

Service of this praecipe acknowledged this 28th day of April, 1922.

S. B. DAVIS, JR.,
R. T. ROGERS, JR., and
C. W. G. WARD,
Solicitors for the Defendants.

89 (Plaintiff's Exhibit 1-a, Field Notes of survey made of the Mora Grant by Thomas Means in 1861.)

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U. S. Ex. 1a

No. 1

Field Notes
Of the Survey of the
Mora Grant,
(Rep. No. 32.

~~Of the Principal Base and Meridian~~
In the Territory of New Mexico.
As Surveyed by
Thomas Means, U. S. Deputy Surveyor,
Under his Contract No. .... dated July 4, 1861.
Survey commenced July 22, 1861.
Survey completed Aug. 2, 1861.

90 Names and Duties of Assistants.

James P. Alexander, Chairman.
John Flora, corner-maker.
Jose' Criego, Chainman.
D. H. Dashiell, Compassman.
Aniceto Gomez, Flagman.

Index.
Mora Grant

East Bd'ry.	Pages	3	to	13
North "	"	14	"	21
West "	"	22	"	27
South "	"	27		

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Survey of the Mora Grant, E. Bdy.

July 22, 1861. Chain compared & found correct.

Beginning at corner established by Pelham and Clements as South East corner of the Las Vegas Grant. This corner stands 37 lks. North of the Spring of the Aguage de la Yegua.— A stone 24+11+5 in., marked + in mound of stones; on this stone on east side, I marked S. E. C. for South East corner of Mora Grant. A high bluff of rock, North of cor.
Lat. of this point 35° 35′ North.
Va. 12° 35′ E.

From South East Cor. of Grant, I run North along East boundary of grant.

Miles. M.	Chs.	
0	2.00	To top of rock bluff.
0	10.00	Rocky arroyo 1.00 ch. wide, course S. E.
0	15.00	Ascend a rocky bluff.
0	25.00	On top of mesa.
0	40.00	Level prairie. Grass good.
1	00.00	Raised a mound of earth for 1 mile point on East boundary from S. E. Cor. of grant. The last 55.00 chs. level prairie. Good grass. Good prairie soil. No trees. No bushes.
1—	40.00	Prairie gently rolling.
2—	00.00	Raised a mound of earth for 2 mile point on East boundary. A pond of water East of Cor. 32 lks. Land rolling prairie, 1st rate soil. No trees. No bushes. Good grass.

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Survey of Mora Grant, E. Bdy.

Miles.	Chs.	
2—	5.00	Entered low place, or sink in plain.
2—	15.00	Line passes through edge of pond.
2—	65.00	Ascend prairie.
3—	00.00	Raised a md. of earth for 3 mile point on E. boundary. Land 1st rate prairie soil. Good grass. No trees. No bushes.
3—	40.00	Level prairie. Grass good.
4—	00.00	Raised a mound of earth for 4 mile point on E. boundary. 1st rate prairie soil. Good grass. No timber. Va. 12° 36′ E.
4—	40.00	Level prairie. Good grass.
5—	00.00	Raised a mound of earth for 5 mile point on east boundary.
5—	10.22	Intersected 4th Correction line North, 23.27 chs. East of ¼ sec. cor., T. 17 North, Range 21 E. Sec. 32, at which point raised a mound of earth.
5—	40.00	Ascend prairie.
5—	60.00	Level prairie.
6—	00.00	Raised a mound of earth for 6 mile point. Extended prairie on all sides. 1st rate prairie soil. No trees. No bushes. Good grass.
6—	10.00	Ascend.
6—	20.00	Still ascend.
6—	35.00	Descend to low place.
6—	40.00	Prairie undulates to east.

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Survey of Mora Grant, E. Bdy.

Miles	Chs.	
7—	00.00	Raised a mound of earth for 7 mile point from S. E. Cor. of grant. Land undulating prairie. 1st rate prairie soil. Good grass. No bushes. No trees.
7—	40.00	Prairie level. Good grass.
8—	00.00	Raised a mound of earth for 8 mile point from S. E. Cor. of grant. Land as last described in last mile.
8—	25.00	To low place in prairie.
8—	45.00	Some rocks on point of prairie.
8—	55.00	Scattering rocks in hollow.
8—	75.00	Many stones & rocks on east side of small rise.
9—	00.00	Set a stone 14+12+4 inches in a mound of stones; stone marked 9 E. B. Land—soil 2nd rate prairie. Grass not good. No trees. No bushes.
9—	32.69	Offset to the right 6.00 chs. to avoid dense thicket.
9—	40.00	Open prairie again.
9—	60.00	Sabino & pinon bushes.
10—	65.00	Left pinion & sabino bushes.
10—	67.50	Offset back to line 6.00 chs.
11—	00.00	Raised a mound of earth for 11 mile point from S. E. Cor. of grant on E. boundary. Some sabino bushes to r't of line. Closed work. Good grass. Good prairie soil. V. 12° 27′ E.

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Survey of Mora Grant, E. Bdy.

Miles.	Chains.	
		July 23rd, 1861.
		Chain compared and found correct.
11—	75.00	Land ascends gradually.
12—	00.00	Raised a mound of earth for 12 mile point from S. E. cor. of grant.
		This cor. stands on south side of sabino bushes.
		Some very good soil.
		Good grass.
12—	20.00	Descend toward canon.
12—	41.50	On edge of rocky bluff.
12—	45.00	On high bluff over canon on south side.
12—	55.00	Very rocky. Many sabino bushes.
12—	59.25	Triangulate over canon, base 50 lks. angle 0° 48′ dist. 35.80 chs.
13—	15.05	Marked on large rock on north side of canon M.
		13. 15.05 chs. E. B. for 13 m. 15.05 chs. from S. E. cor. of grant.
		A stream of water in canon 45 lks. wide, course nearly east; the sides of canon nearly perpendicular about 60 feet high, solid rock. Sabino bushes very numerous.
13—	24.00	Left sabino bushes & entered prairie.
13—	45.00	Open plain.
14—	00.00	Raised a mound of earth for 14 mile point.
		Very good grass.
		Good prairie soil.
		No trees. No bushes.
14—	40.00	Ascend prairie.
14—	60.00	Still ascend.
15—	00.00	Raised a mound of earth for 15 miles from

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Survey of Mora Grant, E. Bdy.

. Chs.	
	S. E. cor. of grant; this cor. is on an elevated part of prairie; still ascends towards North. Grass good. Good prairie soil. No timber; no bushes.
- 40.00	Plain ascends rapidly.
- 00.00	Raised a mound of earth for 16 mile point from S. E. cor. Land high prairie. Good grass. Good prairie soil. No trees. No bushes.
— 00.00	Triangulate over a very wide canon, through which the Rio Mora flows. Base 7.00 chs. Angle 3° 00′; dist. 133.56 chs. At 16 M. 72.00 chs. to S. bank of Rio Mora perpendicular walls on each side of solid rock 75 feet high; course from N. W. to S. E. From bank to bank 4.50 chs.; Stream 1.50 chs. wide; swift current, from 3 to 6 feet deep.
— 00.00	Marked stone 17+11+4 ins. in m'd of stones for 17 m. point, in bottom.
— 53.56	To top of bluff on North side of canon, the point to which I triangulated.
— 53.56	Set a stone 24+6+4 ins. in mound of stones for point on East boundary of grant; stone marked E. B. for East boundary.
— 00.00	Raised a mound of earth for 18 mile point. Prairie soil. Grass good. No timber.

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Survey of Mora Grant, E. Bdy.

Miles.	Chs.	
18—	40.00	Prairie, ascends.
19—	00.00	Raised a mound of earth for 19 mile point. Soil 1st rate prairie soil. Good grass. No timber.
19—	40.00	Prairie level.
19—	50.00	Two ponds of water west of line 27.00 chs.
20—	00.00	Raised a mound of earth for 20 mile point from S. E. corner of grant.
20—	40.00	Level prairie.
21—	00.00	Raised a mound of earth for 21 mile point. Prairie ascends for last two miles towards North. Good prairie soil. Good grass. No timber. No bushes. Could not work for two days. July 26th, 1861. Chain compared & found correct. V. 12° 39′ E.
21—	13.00	Ascend prairie.
21—	25.00	Level prairie, good grass.
21—	75.00	Still level prairie.
22—	00.00	Raised a m'd of earth for 22 mile point. Land 1st rate prairie soil. Good grass. No timber. No bushes.
22—	25.00	Still level.
22—	60.00	Grass very good. Level prairie.

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Survey of Mora Grant, E. Bdy.

iles.	Chs.	
23—	00.00	Raised a mound of earth for 23rd mile point. Good prairie soil. Grass good. No timber. No bushes.
23—	40.00	Descend to a rocky place from plain.
23—	54.25	To top of rocky mesa. V. 17° 30′ E.
23—	65.00	Descend to plain; left mesa.
24—	00.00	Raised a mound of earth in hollow on trail leading E. & W., for 24th mile point. Grass good. No timber.
24—	45.00	Level low prairie.
25—	00.00	Raised a mound of earth for 25 mile point on East boundary from point of beginning (i. e.) from S. E. Cor. of Grant.
25—	40.00	Level prairie.
26—	00.00	Raised a mound of earth for 26 mile point. V. 13° 39′ E. Land level prairie. Grass not very good. No timber. No bushes.
26—	40.00	Prairie gradually ascends to mesa.
27—	00.00	Raised a mound of earth for 27 mile point. Grass not good. Soil sandy. No trees. No bushes.

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Survey of Mora Grant, E. Bdry.

Miles.	Chs.	
27—	11.50	Road from Independence Mo., to Santa Fe N. M., bears S. W. & N. E.
27—	40.00	Ascend to mesa.
28—	00.00	Raised a mound of earth for 28 mile point. The prairie ascends towards mesa. Soil sandy. Grass not good. No trees. No bushes.
28—	15.00	An arroyo with water; course N. E. & S. W.
28—	40.00	Gradually ascends to mesa.
29—	00.00	Set a stone 16+9+4 ins. in mound of stones for 29th mile point—here. Soil sandy. Grass not good. No trees. No timber.
29—	11.16	Intersected 5th Correction Line North, 23.16 chs. East of ¼ sec. cor. in sec. 32, T. 21 N. R. 21 E., at which point set a stone in a m'd of stones.
29—	40.00	To a rocky point between two mesas 1 E. & 1 West—the 1 west shape cubical; the one East of line shape conical; each mound about 60 feet high and 17.00 chains apart.
30—	00.00	Set a stone 13+9+6 inches, in a mound of stones; stone marked 30 E. B. for 30 mile point on E. boundary. Last ½ mile over rocky ridge.
30—	30.00	Fine grass on low plain.
30—	40.00	Level rich land.
31—	00.00	Raised a mound of earth on level prairie for

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Survey of Mora Grant, E. Bdy.

e.	Chs.	
		31 mile point; a beautiful low plain, fertile. V. 12° 39′ E.
1—	53.50	Gradually ascend.
2—	00.00	Mound of earth—large,—for 32 mile point on East boundary. 1st rate, soil. Grass good. No trees. No timber, no bushes.
32—	25.00	Small black rocks on surface.
32—	40.00	Prairie rolling.
33—	00.00	Raised a mound of earth for 33 mile point. Land good prairie soil. Grass good. No timber. No bushes.
33—	54.00	On level prairie.
33—	75.00	The prairie extends out far to the East of line.
34—	00.00	Raised a mound of earth for 34 mile point. Grass not good. Surface covered with scoria or black stone.
34—	40.00	Grass very poor.
35—	00.00	Raised a mound of earth for 35 mile point. Very little grass. No timber.
35—	11.50	Rocky canon.
35—	25.00	An open prairie, level.

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Survey of Mora Grant, E. Bdy.

Miles.	Chs.	
36—	00.00	Raised a mound of earth for 36 mile point, a level plain; grass not good. No trees. No bushes. July 27th, 1861. Chain compared & found correct.
36—	7.50	Cross abrupt ends of plain, comes from west and terminates here; another 20 feet lower extends out to the east.
36—	40.00	Much scoria on ends of mesa. V. 12° 39′ E.
36—	41.00	Descend to another plain.
36—	70.00	Cross Apache road, from Santa Fe to Independence, (course S. W. & N. E.)
37—	00.00	Raised a mound of earth for 37 mile point. Grass not good. No trees. No bushes.
37—	68.00	Bluff of mesa.
37—	70.00	On mesa.
38—	00.00	Set a stone 24+16+10 ins. in Canon or opening between mesas, in mound of stones; stone marked 38 E. B.; ends of mesas very rocky; grass on mesas good. 3rd rate soil. A few scattering cedars.
38—	25.00	On top of mesa, the ends of a plain from west terminate here in abrupt mesas.
38—	40.00	Level prairie.
38—	72.43	Triangulate down bluff into plain 120 feet lower; base 4.00 chs.; angle 1° 51′; distance 123.80 chs.
40—	36.23	Raised a large mound of earth for point on

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Survey of Mora Grant, E. Bdy.

Miles.	Chs.	
		East boundary, the 39 & 40 mile points falling in points inaccessible.
41—	00.00	Raised a mound of earth for 41 mile point. Land south of the ends of mesas 1st rate level low prairie; extends for many miles east.
41—	40.00	Level prairie. Good grass.
42—	00.00	Raised a mound of earth for 42 mile point from S. E. cor. of grant. Land 1st rate prairie soil. No trees. No bushes. Good grass.
42—	40.00	Land descends towards Ocate river.
43—	00.00	Raised a mound of earth for 43 mile point. Land 1st rate soil. Good grass. No timber. No bushes.
43—	5.50	To the Ocate river, channel at this point 25 lks. wide; no running water at this point; course nearly E. and W. at this point— At this point on South & right bank of Ocate river, raised a large mound of earth; dug 2 pits East of mound for N. E. Cor. of Grant. Latitude of this corner is 36° 13′ North. Variation 13° 40′ E.

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Survey of Mora Grant.

Miles. Chs.

Meanders of Ocate River,—North Boundary—Up Stream, Right Bank.

From the N. E. Cor. of grant, I meander along the North boundary.

Thence

	Chs.
S. 64½ W.	123.84
S. 43¾ W.	86.50

From the above Station, river runs through a deep canon between mesas, 300 feet high. S.60 W. 39.42 chains. This bearing brings me on plain on top of mesa close by right bank of river.

S. 81½ W. 28.06 chains.
S. 53¾ W. 26.93
S. 33½ W. 19.15
S. 77½ W. 16.89
S. 13½ W. 45.10
S. 62½ W. 41.12
S. 83¾ W. 26.96
S. 56¼ W. 27.14
S. 32¾ W. 26.50
S. 72 W. 21.32
S. 50¾ W. 25.38
S. 26¼ W. 28.37
S. 86¼ W. 44.34

Lat. 36° 9′ N.
V. 13° 31′ E.

July 28th, 1861.

Chain compared & found correct.

River at this point is 3.25 chs. from bank to bank perpendicular walls on each side of stream; channel here only 75 lks. wide; very little water in some places. Grass on the plain along its banks good, a few cedar bushes.

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Miles.

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Survey of Mora Grant. North Boundary.

Chs.			
	Thence		
	S. 79½ W.	20.27 chs.	
	S. 44¾ W.	12.90	
	N. 82½ W.	43.00	
	N. 62½ W.	20.75	At 6.40 chs. canon 1.25 chs. wide.
	N. 21¾ E.	25.90 chains.	
	N. 30¼ W.	9.07	
	N. 61¾ W.	21.47	
	West	37.26	
	S. 70½ W.	33.88	
	N. 76¼ W.	21.60	
	N. 84 W.	16.83	
	N. 84½ W.	11.06	
	N. 59¼ W.	19.62	At 9.00 chs. cross road from Fort Union to Rayoda, bears N. E. & S. W. At 19.62 chs. cross a road leading to Mora; course nearly E. & W. Here the stream becomes very narrow, only 27 lks. wide; banks nearly level with water. Land becoming fertile. Grass very good.
	N. 9½ E.	14.00 chs.	
	N. 81¾ W.	17.40	
	N. 57 W.	15.91	Level bottom land; banks of stream low; grass good.
	S. 64½ W.	19.17	
	N. 65¼ W.	33.08	At 27.50 chs. a house 3.80 chs. south of line.
	N. 79½ W.	45.43	
	N. 80 W.	39.07.	At this point end of mesa on south of line close to line.
	N. 64¾ W.	21.60 chains.	Enter canon between mesas.
	N. 74 W.	27.50 chs.	At 15.00 chs. entered

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Survey of Mora Grant. North Boundary.

Miles.	Chs.	
		cultivated land. Good corn and wheat & oats.
		N. 74 W. 24.12 chains. At 10.00 chs. a house 7.30 chs. north of line.
		N. 85 W. 40.88 chains.
		N. 61¾ W. 54.04. Here river passes between mesas & mountains. Some timber on the mountain. At 30.00 chs. entered cultivated land.
		N. 70 W. 18.05 chains.
		N. 76¾ W. 49.44 At 40.00 chs. road. bears N. W. & S. E.; cultivated land here.
		V. 13° 45′ E.
		River passes between high mountains & mesas.
		N. 75¼ W. 37.75 chs. At 20.00 chs. a stream from N. W. enters Ocate in the fork of streams. On North bank stands the house of Mr. Williams. At 29.30 chs. on N. bank stands the house of Mr. Jones.
		N. 85 W. 40.33 chains.
		N. 89¾ W. 54.41 Here the canon where river passes through is very narrow, 4.00 chs. wide. Timber of large size on both sides of stream.
		S. 73½ W. 31.60 chs.
		N. 69 W. 31.50 At this point mesa on North of line makes a sharp turn to N. W. Two houses on N. of river about 3.00 chs. At 25.00 chs. A house on left bank.

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Survey of Mora Grant. North Boundary.

Chs.

N. 48¾ W. 50.10 chains. A rich valley about one mile wide between high mountains. Cultivated land on both sides of river.

N. 40½ W. 58.34 chains.
At 23.00 chs. a house on right bank.
" 33.20 a house on right bank.
" 43.75 a house " " bank.

N. 18 W. 43.53 chs.

N. 20½ W. 50.36. At 40.00 chs. a little village 15.00 chs. right of line, called Gallinas.

N. 30 W. 51.62 chains.
At end of this course a stream comes from E. of North. course West of South and flows into the stream I meander;

The opinions of citizens living in this vicinity differ in regard to which of these three streams we may give the name Ocate; all three flow from the North and seem to me to be the three last visible branches of the Ocate river, (i. e.) which compose the Ocate river.
1st Branch on which Mr. William house stands.
2nd Branch on which Mr. Wheaton's stands.
3rd Branch on which Mr. Lucero's stands.

By Mr. Williams I am informed the stream upon which Mr. Wheaton lives is the Ocate.

By Mr. Wheaton I am informed the stream upon which Mr. Lucero lives is the Ocate river.

July 29th, 1861.

Being informed by Mr. C. Carson and Col. St. Vrain, that the Black Lake or Agua Negra, was

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Survey of Mora Grant. North Boundary.

Miles. Chs.

the source of the Ocate river. I conclude to meander the most westerly branch of these three already described.

Thence, V. 13° 33' E.

Chs.

N. 65¼ W. 173.83. At 117.50 chs. Manuel Lucero's house.

Chains.

N. 33¼ W. 33.74. Here stream passes on west side of a high mesa. Plenty of timber & bushes. Grass very good. Cultivated land on both sides.

N. 45 W. 19.00 chs.

N. 22 W. 15.00 Here river runs through a deep canon.

N. 14½ W. 6.72 chains.

N. 31 W. 14.00

N. 20¾ W. 10.50

N. 72½ E. 2.96

N. 21½ W. 13.85

N. 2 W. 6.78

N. 15¾ W. 5.09

N. 32 W. 4.71

N. 52¼ W. 3.66

N. 48 W. 2.86

N. 34 W. 19.39

N. 44 W. 12.00

N. 31½ W. 19.66 chs. On both sides of river are high mountains.

N. 5 W. 8.50 chs.

N. 5½ W. 11.81

N. 1¼ E. 21.26

N. 20¾ E. 12.00

N. 40 E. 14.50

N. 20½ E. 40.90

N. 29½ E. 18.00

N. 51¼ W. 19.34

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Survey of Mora Grant. North Boundary.

s. Chs.

N. 72½ W. 13.22 chs.
N. 88½ W. 3.00
N. 58¼ W. 10.44
S. 86 W. 4.85
N. 84¾ W. 7.27
N. 49¾ W. 3.92
N. 26 W. 18.18
N. 35 W. 28.73
N. 64 W. 15.89
N. 50¼ W. 25.46
N. 38 W. 65.25 At this point the stream called the Ocate river becomes invisible, lost to view in the mountains.

Latitude of this point is 36° 18′ North

From this point I run along what is considered the North boundary (by the citizens of the vicinity) of the Grant.

Lakes at different points from this place to Black Lake are taken by the citizens as part of North boundary.

Thence

N. 79¾ W. 22.08 chs.
N. 79 W. 8.67
S. 74¼ W. 2.33
S. 71¼ W. 31.07 At 31.07 chs. set a stone 16+12+2 ins. in mound of stones. Stone marked N. B. for North Boundary.

At 15.00 chs. on last course passed a pond south of line about 10 chs. in diameter.

S. 80½ W. 17.60 chains. At 10. chs. cross wagon road to Taos from States, bears S. W.

At 17.60 chs. raised a mound of earth for point on N. boundary.

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Survey of Mora Grant. North Boundary.

Miles. Chs.

N. 86½ W. 31.59 chains. At 11.50 chs. line pass through the S. edge of a pond.
At 31.59 chs. set a stone 13+9+4 ins. in mound of stones for N. boundary. Stone marked N. B.

S. 88¼ W. 36.33 chs.
At 36.33 chs. set a stone 12+9+5 ins. in mound of stones; stone marked N. B. for point on North boundary.

S. 79 W. 43.29 At 43.29 chs. Set a stone 17+8+5 ins. in mound of stones, stone marked N. B. for point on North boundary.

S. 75½ W. 13.80 chs.

S. 46¼ W. 3.40 "

S. 48¼ W. 71.00

S. 89 W. 55.10 At 35.00 chs. wagon road to Taos, bears N. W.
At each termination of each course erected a mound of stones for points on N. boundary.

S. 71½ W. chs.
At 22.25 chs. cross Rio Coyote, a beautiful stream 75 lks. wide, runs out of Black Lake, course N. W. at this point.

At 117.35 a high point south of Black Lake 15.00 chs., I raised a large mound of earth for point on North boundary; this mound is in the valley of the Black Lake between 2 high mountains, course of mountains nearly North & South.

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Survey of Mora Grant. North Boundary.

les. Chs.

M. Chs.

This mound is 10 40.54 (by calculation), east of the N. W. Corner of the Mora Grant; which will be seen in the notes from this point to the place called Estillero, on West Boundaray.

From mound at Black Lake to N. W. Cor. of grant, the precipitous mountain renders inaccessible.

The valley of Black Lake is in the mountains. Rich soil; excellent grass about one mile from East to West, upon each side E. & W. of Lake are seen the lofty peaks of those mountains, the valley as it were, forming a canon between; on th[illegible]ntains abundance of oak, pine and [illegible]imber of a very large size.

The Black Lake from N[illegible] to S. E. is 65.00 chs., and from North to South average about 12.00 chs.; very deep water; soft bottom; black fish in abundance.

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Survey of Mora Grant.

Miles. Chs.

West Boundary.

Meanders between mountains.

July 30th, 1861.

Chain compared and found correct.

Latitude of mound at Black Lake. 36° 16′ North.

V. 12° 36′ East.

From mound at Black Lake, I meander along the base of the mountain, which forms the west boundary of Mora Grant.

Thence

S. 30¾ E 121.40 chs.
S. 29½ E. 24.71
S. 27¼ E. 31.14
S. 24¾ E. 43.25
S. 1¾ W. 24.32
S. 20¼ E. 25.27
S. 33½ E. 12.81
S. 37½ E. 16.36

The last dist. found by triangulation—base 50 lks. angle 1° 45′, dist. 16.36 chs. to high bluff on south side of Cayote river. River is 65 lks. wide, 3 feet deep; a rapid current, course nearly south, passes in canon.

S. 8½ W. 14.90 chs.
S. 3 W. 28.59
S. 16½ E. 9.45
S. 21¼ W. 1.35
S. 9½ W. 31.07

At 7.50 chs. cross Cayote river, course South, 1.25 chs. wide, 2 feet deep here. River runs in canon very narrow, perpendicular fronts of rock on both sides 100 feet high.

Chains

S. 23¼ W. 5.06
S. 77½ W. 5.00

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Survey of Mora Grant. West Boundary.

Miles.	Chs.			
			chs.	
		S. 6½ E.	8.60	At 3.00 chs. cross Cayote, course south.
		S. 3¼ E.	3.33	
		S. 9 W.	7.90	
		S. 41 E.	5.26	At 75 lks. crossed Cayote river, course nearly south.
			Chains.	
		S. 7 W.	5.46	
		S. 3 E.	13.74	
		S. 24¾ E.	4.14	
		S. 4¼ E.	4.25	
		S. 5 E.	5.50	
		S. 15¾ W.	4.54	
		S. 9½ W.	15.47	
		S. 22½ E.	14.07	At 13.50 chs. crossed Cayote river; course W. of south.
		S. 50½ E.	5.00 chains.	
		S. 6½ E.	17.28	
		S. 21¼ E.	5.67	
		S. 5 W.	24.69 chs.	—At 16.75 chs. crossed river (Cayote), course nearly south.
		S. 17½ W.	3.29 chains.	At 3.29 chs. cross Cayote, course S. W.
		S. 19¼ E.	8.96 chains.	
		S. 3¼ W.	5.50	
		S. 23¼ W.	5.22	
		S. 31 E.	9.64	
		S. 1 W.	24.45	
		S. 29 W.	28.00	At 12.50 chs. cross Cayote river, course E. of South.
		S. 53¾ W.	9.47	
		S. 4½ W.	24.68	
		S. 3½ W.	7.96	
		S. 9¾ W.	12.15	
		S. 11 E.	13.50	
		S. 22½ E.	10.20	
		S. 9¼ W.	5.00	

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Survey of Mora Grant. West Boundary.

M. Chs.

S. 14½ E. 19.67 chs.

S. 7¾ W. 106.00. To the North end of Church in Plaza of Guadalupita, a Mexican village containing 150 inhabitants; situated in a beautiful, fertile valley between the mountains; last 2 miles cultivated land; good crops.

July 31st, 1861.

Lat. 36° 10′ North.

V. 13° 15′ East.

Chain compared & found correct.

S. 48½ W. 19.28 chs.

S. 27½ W. 4.50

S. 9 E. 88.00

S. 13¾ W. 35.53

S. 15¾ W. 176.90

S. 21½ W. 194.50

S. 20½ W. 122.00

S. 25½ W. 68.90

S. 66½ W. 18.94

S. 58¼ W. 25.80. At this point roads fork, 1 S. E. to lower Mora, the other S. W. to upper Mora. Lower Mora is situated in a large fertile valley between mountains. "Nearly surrounded by Mountains".

S. 54 W. 42.00 chs.

S. 64 W. 206.25 At 81.00 chs. on this course the Court house ~~is~~ in lower Mora, bears S. 50¾ E. dist. 155.00 chs.

N. 80¾ W. 22.00—At 21.50 chs. Rio Mora, course East; Many houses on left of line.

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Survey of Mora Grant. West Boundary.

M. Chs.

N. 78¾ W. 5.00 chains.
N. 37¼ W. 6.00 "
N. 41½ W. 51.50
N. 32¼ W. 38.00
S. 30 W. 8.94—To the center of Plaza in Upper Mora.

Having been shown the point of the mountain which is called Estillero in the Grant, by Antonio Lopez and Mr. Paiz, I took its bearing from this point being N. 42 W. 592.30 chs.
At 75 chs. cultivated land.
At 1 M. 25.00 chs. A house on left.
At 2 M. 00.30 trail to Picuris.
At 3 M. 00.00 chs. Cross the North branch of Rio Mora.

Miles Chains.
At 4— 25.00.—Ascend a stony ridge.
At 4— 40.00.—Ascend mountain.
At 5— 00.00.—Mountain very steep.
At 5— 28.30.—On top of mountain.
At 5— 36.30.—On N. W. edge of mountain.
At 6— 00.00 —To low place in mountain.
At 7— 00.00 —Entered bottom between mountains.
At 7— 32.30. to place called Estillero on West boundary. The point called Estillero is a low place on mountain North of a trail from Mora to Picuris. Abundance of timber on mountains; grass good in valleys.

August 1st, 1861.

Having determined the Estillero, the point on West boundary called for in the Grant, I returned to the point in the center of Plaza in Upper Mora and continue my meanders along the base of mountain.

Thence

S. 19 W. 15.07 chains.
S. 19½ W. 38.95 " At 7.50 chs. cross S.

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Survey of Mora Grant. West Boundary.

M. Chs.

branch of Rio Mora. At 34.00 chs. another branch.

S. 7½ W. 12.65 chains.
S. 12 E. 4.15
S. 30½ E. 12.47 V. 14° 25′ East.
S. 42½ E. 10.00 chs.
S. 25 E. 8.30
S. 8 W. 7.10
S. 38¾ W. 35.23
S. 27 W. 19.80
S. 5 E. 19.65
S. 11 E. 64.22
S. 64 W. 14.47
S. 55¼ E. 93.83—At 50.00 chs. Cebolla or valley containing many houses & cultivated land.
S. 26 E. 175.00 chains. Many houses left of line on small stream called Cebolla, course S. E. At 158.50 chs. pass house by offset.
S. 10¾ E. 82.15 chs.
S. 18½ E. 27.00
S. 23 W. 8.63
S. 24 W. 74.25
S. 42¾ W. 39.77
S. 49 W. 42.67
S. 45¼ W. 179.00 At 179.00 chs. is the Rio Rincon, course East. A small Town of the same name 109.00 chs. West of line; cultivated land along the stream.

Chs.

South. 368.22, to ridge on Rio Sapello.
At 60.00 chs. high mesa E. & W.
90.00 " On top of mesa.

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Survey of Mora Grant, West Boundary.

Chs.
At 120.00, level mesa, well timbered.
" 249.00, S. side of mesa.
" 300.00, to bottom of mesa.
" 330.00, Ascend a ridge.
" 350.00, Descend S. side of ridge.
" 368.22, To ridge on Rio Sapillo.

Thence,

West, 74.84 chs., along left bank of Rio Sapillo, up stream on ridge.
S. 87 W. 45.00 chs.
S. 36 W. 16.00
S. 85 W. 29.10. At 27.50 chs. cross Rio Sapillo to right bank.
At 29.10 chs. to cor. established by Pelham & Clements on right bank of Sapillo as the N. W. Cor. of the Las Vegas Grant.

From this point the S. W. Cor. of Mora Grant by calculation, is due West, 2M. 3.10 chs. inaccessible,—a line passing through the Estillero N. & S. will intersect the Rio Sapello 2 miles, 3.10 chs. West of the N. W. Cor. of Las Vegas grant, which point of intersection is the S. W. Cor. of Mora Grant.

Lat. 35° 50′ N.
V. 13° 3′ E.

For South Boundary of Mora Grant, reference will made to Field Notes of Las Vegas Grant, by Pelham & Clements.

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Survey of Mora Grant. West Boundary.

The Rio Sapello is a bold stream, about 1.20 chs. wide, depth of water from 2 to 3 feet, flows here through a deep canon between mountains.

Timber of large size on mesas & mountains; the valleys between mountains rich and chiefly under cultivation; grass very good.

General Description.

The East boundary of Mora Grant is on a prairie, gradually ascending towards North. Grass along the line very good. No timber except in Canon Rio Mora.

The North boundary with the exception 6 or 8 miles on the east, which is a deep narrow canon between mesas, is in a beautiful fertile valley, through which the river Ocate flows. Cultivated land, excellent grass, oak, pine & poplar timber on the mountains in abundance; many thriving settlements along this boundary.

The West boundary is the chain of mountain West of Black Lake, course nearly N. & S. East of Black Lake is another chain of mountain nearly parallel to the former; these ranges are at places 3 miles apart, at other places, 2m., 1m., ½m., & at other places approach each other so near as to form a narrow canon. These valleys are openings between the mountains; are very rich. Many settlements in a prosperous state. Cultivated farms, excellent grass, timber in abundance.

Aug't 2nd, 1861.
Thomas Means,
Deputy Surveyor.

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A List of Names,—

Of the individuals employed to assist in running, measuring or marking the Lines and Corners described in the foregoing Field Notes of the survey of the boundary lines of the Mora Grant, North of the Base line and East of the Principal Meridian in New Mexico, showing the respective capacities in which they acted.

James P. Alexander, Chainman
John Flora,.....Corner-maker.
Jose' Criego. Chainman
D. H. Dashiell. Compassman.
Aniceto Gomez. Flagman.

We hereby certify that we assisted Thomas Means, Deputy Surveyor, in surveying the boundary lines of the Mora grant, N. of the base line, and E. of the Principal Meridian in New Mexico, and that said Grant has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the Surveyor General.

J. P. Alexander, Chainman.
his
John + Flora, Chainman.
mark.
his
Jose' + Criego, Cornermaker.
mark.
D. H. Dashiell, Compassman.
his
Aniceto + Gomez, Flagman.
mark.

Sworn to and subscribed by the foregoing named persons before me this 16th day of August, 1861.

A. P. Wilbar,
Sur. Gen'l N. M.

I, Thomas Means, Deputy Surveyor, do solemnly swear that in pursuance of a Contract with Alexander P. Wilbar, Surveyor of the Public lands of the United States in the Territory of New Mexico, bearing date the fourth day of July 1861, and in strict conformity to the laws of the United States, and the Instructions by said Surveyor General, I have faithfully surveyed the boundary lines of the Mora Grant North of the Base line and East of the Principal Meridian in New Mexico, and do further solemnly swear that the foregoing are the true and original Field Notes of such survey.

Thomas Means,
Deputy Surveyor.

Sworn to and subscribed by said Thomas Means, Deputy Surveyor, before me, this 16th day of August, 1861.

A. P. Wilbar,
Sur. Gen'l, New Mexico.

Sworn to and subscribed by said Thomas Means, Deputy Surveyor, before me this 31 day of Oct. A. D. 1862.

Thomas Means.
Kirby Benedict,
Judge U. S. Court,
1st Jud. Dis. New Mexico.

(See Book of Notes on file sworn to by Deputy Means, November 9, 1861.) See page 365-372 in this book—(O. C.)

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Final Oath of U. S. Deputy Surveyor.

..... U. S. Deputy Surveyor,
solemnly swear that in pursuance of a contract received
n ....., U. S. Surveyor General for
w Mexico, bearing date of the .... day of .....,
.., I have well, faithfully, and truly, in my own proper
son, and in strict conformity with the instructions fur-
hed by the U. S. Surveyor General for New Mexico, the
nual of Surveying Instructions, and the laws of the
ited States, surveyed all those parts or portions of the
.....
.....
.....
the principal base and meridian in the Territory of New
xico, which are represented in the foregoing field notes as
ving been surveyed by me and under my direction; and I
further solemnly swear that all the corners of said survey
ve been established and perpetuated in strict accordance
th the Manual of Surveying Instructions and the special
itten instructions of the U. S. Surveyor General for New
exico, and in the specific manner described in the field
tes, and that the foregoing are the *true* field notes of such
rvey; and should any fraud be detected I will suffer the
nalty of perjury under the provisions of an act of Congress
pproved August 8, 1846.

.....
U. S. Deputy Surveyor.

Subscribed by said.....
and sworn to before me this.....
day of ....., 189..

.....
[Seal.] U. S. Surveyor General for New Mexico.

Approval.

Office of the U. S. Surveyor General.

....., 189...

The foregoing notes of the survey of.....
.....
.....
executed by ..... under his Con-
ract No. ....., dated ....., 189..., hav-
ng been critically examined, and the necessary corrections
nd explanations made, the said field notes, and the surveys
hey describe, are hereby approved.

.....
U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the survey of the exterior boundary lines of the Mora Grant, Reported No. 32, as surveyed by Thomas Means Deputy Surveyor, under Cont. dated July 4, 1861, in July and August, 1861.
in the Territory of New Mexico, has been correctly copied from the original notes on file in this office.

Sept 28th 1900.

Quinly Vance
U. S. Surveyor General.

120 1900—131713—3

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121 No. 2. Mora—Corrections.

Field Notes
Of the Survey of
A Portion of the Lines of the
Mora Grant.
(Rep. No. 32.)

~~Of the Principal Base and Meridian~~
In the Territory of New Mexico,
As Surveyed by
Thomas Means, U. S. Deputy Surveyor,
Under his Contract No..... dated July 4th, 1861,
and under instructions of the Surveyor General
dated Nov. 2, 1861
Survey commenced November 6th, 1861.
Survey completed November 8th, 1861.

122 Names and Duties of Assistants.
Aniceto Gomez, Chainman.
Salvador Trujillo, Chainman.
Antonio Maria Martinez, corner maker & Axman.

Index.

A List of Names.

A list of the names of the individuals employed to assist in running, measuring or marking the lines and corners described in the Field Notes of a portion of the survey of the Mora Grant, showing the respective capacities in which they acted.

Aniceto Gomez, Chainman.
Salvador Trujillo, Chainman.
Antonio Maria Martinez Corner maker & axe man.

We hereby certify that we will assist Thomas Means, Deputy Surveyor in surveying a portion of the lines of the Mora Grant, and that we will faithfully execute the duties assigned to each of us in our respective capacities, to the best of our skill & ability.

his
Aniceto + Gomez. Chainman.
mark.
his
Salvador + Trujillo, Chainman.
mark
his mark
Antonio + Martine Corner ma-
mark.
ker.

Sworn to and subscribed by the foregoing named persons before me, a Justice of the Peace for the County of Mora, in the Territory of the New Mexico, this 6th day of November, 1861.

Jose' Mascarenias,
Justice of the Peace.

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Survey of a Portion of the Lines of the Mora Grant.

Chain compared and found correct.
Variation 13° 9′ East.

From the Station in the center of the Plaza in upper Mora, I run
N. 42 W. 7 miles 32.30 chains. 3 miles North branch of Rio Mora.
miles Chs.
4— 25.06 Ascend stony ridge.
4— 40.35 to mountain.
5— 00.00, mountain very steep & rough.
5 miles 28.00 chs. gained top of mountain.
5 miles 36.35 chs. on N. W. edge of mountain.
6 miles descend to low place in mountain.
7 miles in bottom between mountains.
7 miles, 32.30 chs. to the place called the "Estillero" pointed out to me by Jose' Francisco Paiz & Manuel Antonio Paiz at this time, at this point called "Estillero", set a stone 30 inches long, 19 inches wide, and 7 inches thick; stone marked on East side W. B. M. G. for West boundary of Mora Grant and on West side, E. O. for "Estillero"; around this stone I raised a large mound of stones for point on West boundary of grant.

From this mound an Aspen tree 12 inches in diameter, bears N. 74½ E., distance 1.70 chs., on this tree I cut W. B. M. G. and the word, "Estillero" in full and from said mound

A pine tree bears North, distance 3.71 chs., pine tree 17 inches in diameter, on this tree I cut W. B. M. G. and "Estillero"; at East side of this pine tree, set a stone 20 inches long, 12 inches wide, & 3 inches thick, marked W. B., M. G., in a mound of stones; this mound stands at base or foot of a very

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Survey of a Portion of the Lines of Mora Grant.

high, rough mountain, over which I cannot go.

I return to the mound at "Estillero" and run South along West boundary of Grant. 2.30 chs. Trail to Picuris, course N. W. 18.18 chs. Rio Pueblo, N. W. & S. E. 34.50 chains, to foot of a very high mountain over which I cannot go. At this point set a stone 18 inches long, 12 inches wide, & 5 inches thick, stone marked W. B., M. G.; in mound of stones for point on West boundary of Mora Grant.

The mountains are so high & rough I cannot proceed further south on West boundary.

November 6th, 1861.

Chain compared & found correct.

Variation 13° 4′ E.

Beginning at the N. W. corner of the Las Vegas Grant, on right bank, I meander up stream the Rio Sapillo.

Thence,

N. 71½ W. 5.00 chains.
N. 80 W. 2.55
N. 87½ W. 8.16 at 2.35 chs. cross Rio Sapillo to left bank, river narrow in canon 35 lks. wide.
N. 75 W. 10.30 chains.
S. 88¼ W. 17.28 chs.
N. 74 W. 4.37
N. 79 W. 5.16
S. 84 W. 7.25 this course over high bluff of rocks in canon.
N. 62½ W. 9.20 chains.
N. 79¾ W. 12.00
N. 84 W. 8.90
S. 89½ W. 5.40

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Survey of a Portion of [he] Lines of the Mora Grant.

N. 72½ W. 11.22 chains.
N. 57 W. 6.50
N. 78¼ W. 4.20
N. 86 W. 2.50
S. 73 W. 5.15
N. 48½ W. 3.88
N. 76 W. 10.27
N. 80 W. 8.25
N. 87¾ W. 4.75
S. 65 W. 3.24
N. 83 W. 5.40
N. 77¼ W. 8.20 Having made 2 miles 3.10 chs. west, I set a stone 20+14+6 inches marked S. W. C., M. G. for S. W. corner of Mora Grant in mound of stones; this corner stands on left bank 1.52 chs. North from stream, on edge of high mountain on south side. I cannot produce the line further North on West boundary.

Nov. 8th, 1861.

We hereby certify that we assisted Thomas Means, Deputy Surveyor, in surveying a portion of the lines of the Mora Grant, and that said survey has been in all respects to the best of our knowledge & belief, well and faithfully executed, and the boundary monuments planted according to the instructions furnished by the Surveyor General.

his.
Aniceto + Gomez. Chainman.
mark
his
Salvador + Trujillo, Chainman.
mark.
his
Antonio + Martine, corner maker.
mark.

Sworn to and subscribed by the foregoing named persons, before me a Justice of the Peace, for the County of Mora, in the Territory of New Mexico, this 9th day of November, 1861.

Jose' Mascaneria,
Justice of the Peace.

I Thomas Means, Deputy Surveyor, do solemnly swear that in pursuance of a contract with Alexander P. Wilbar, Surveyor of the Public Lands of the United States, in the Territory of New Mexico, bearing date ~~of~~ the 4th day of July, 1861, and in strict conformity to the laws of the United States, and the instructions furnished by the Surveyor General, I have faithfully surveyed that portion of the lines of the Mora grant which is practicable, required in the instructions of the Surveyor General, of the 2nd day of November 1861, and do further solemnly swear that the foregoing are the true and original field notes of such survey.

Thomas Means,
Deputy Surveyor.

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Sworn to and subscribed by the said Thomas Means, Deputy Surveyor, before me a Justice of the Peace for the County of Mora, in the Territory of New Mexico, this 9th day of Nov., 1861.

Jose' Mascarenias,
Justice of the Peace.

We hereby certify that we know the point in the mountains called "Estillero", and also the Range of mountains from Black Lake to the Rio Sapillo, and believe it totally impracticable if not impossible to survey a line North and South through the point called "Estillero, from Black Lake to the Rio Sapillo.

Geo. W. Merritt.
Blas Lujan
Juan Anto. Martin.
his
Franco + Salisar.
mark.
Wm. A. Bransford.
James Thomas.

Sworn to and subscribed by the foregoing named persons before me a Justice of the Peace for the County of Mora, in the Territory of New Mexico, this 9th day of November, 1861.

Jose' Mascarianes,
Justice of the Peace.

(See book No. 3 of Notes on File sworn to by Deputy Thomas Means, April 13, 1863.)
See page 375 to 383 this book (O. C.)

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129 Final Oath of U. S. Deputy Surveyor.

I.....U. S. Deputy Surve
do solemnly swear that in pursuance of a contract recei
from....., U. S. Surveyor General for N
Mexico, bearing date of the.....day of.....
189.., I have well, faithfully, and truly, in my own pro
person, and in strict conformity with the instructions
nished by the U. S. Surveyor General for New Mexico,
Manual of Surveying Instructions, and the laws of
United States, surveyed all those parts or portions of
.....
.....
.....
of the principal base and meridian in the Territory of N
Mexico, which are represented in the foregoing field notes
having been surveyed by me and under my direction; an
do further solemnly swear that all the corners of said sur
have been established and perpetuated in strict accorda
with the Manual of Surveying Instructions and the spe
written instructions of the U. S. Surveyor General for N
Mexico, and in the specific manner described in the fi
notes, and that the foregoing are the *true* field notes of s
survey; and should any fraud be detected I will suffer
penalty of perjury under the provisions of an act of Cong
approved August 8, 1846.

.....
U. S. Deputy Surveyor

Subscribed by said.....
and sworn to before me this.....
day of....., 189..

.....
[Seal.] U. S. Surveyor General for New Mex

Approval.

Office of the U. S. Surveyor General,
.....,18

The foregoing notes of the survey of.....
.....
.....
executed by .....
under his Contract No....., dated....., 189.., hav
been critically examined, and the necessary corrections
explanations made, the said field notes, and the surveys t
describe, are hereby approved.

.....
U. S. Surveyor General

I certify that the foregoing transcript of the field notes of the survey of a portion of the lines of the Mora Grant (Rep. No. 32), as surveyed by U. S. Deputy Surveyor Thomas Means, in November, 1861, under cont. dated July 4, 1861 & Instructions from the Surveyor General of Nov. 2, 1861. in the Territory of New Mexico, has been correctly copied from the original notes on file in this office.

Sept 28th 1900. Quinly Vance
U. S. Surveyor General.

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130 (Plaintiff's Exhibit 1-b, Patent issued for the Mora Grant, dated August 15, 1876.)

The United States of America,

To all to whom these presents shall come, Greeting:

Mora Grant

Jose Tapia and others grantees

Whereas under the provisions of the eighth section of the Act of Congress approved on the twenty-second day of July, Anno Domini one thousand eight hundred and fifty-four, entitled "An Act to establish the offices of Surveyor General of New Mexico, Kansas and Nebraska, to grant Donations to Actual settlers therein and for other purposes" Jose Ma Valdez and Vicente Romero on behalf of themselves and the other inhabitants, settlers of the valley of Mora and those claiming or deriving title under the original grant, filed their petition with the United States Surveyor General for the Territory of New Mexico; praying the confirmation of their title to a certain tract of land situate in the County of Taos in the said Territory of New Mexico, and known as the valley of Mora founded upon a certain grant made on the twenty-eighth day of September A. D. one thousand eight-hundred and thirty-five by Albino Peres, then Political Chief of the Territory of New Mexico, but which said grant has been lost or destroyed, and also by virtue of having been placed in actual legal possession of said tract of land, which said act of possession is in the words and figures as follows, to wit:

See letter from Sur. Genl. N. M. Aug. 31 76. M 4935, inclosing receipt of Thomas B. Catron one of the owners and as Atty for others for Mora Grant patent.

"Grant Translation,
"Seal Third (Seal) Two Reals,
"For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one

(Seal) Its value is one dollar per sheet. On the 20th, of Oc
tober one thousand eight hundred and thirty-five, I, Manue
Antonio Sanchez, Constitutional Justice of the jurisdictio
of San Jose de las Trampas with my attending witnesses
with whom I act by appointment, in compliance with th
superior decree of Don Albino Perez, Political Chief of th
Territory dated the twenty-eight day of Septembe
131 last past, I proceeded to the place called Demora
within the jurisdiction under my charge, for the pur
pose of distributing this public land as is provided in th
aforementioned superior decree, and being there, and th
settlers interested amounting to seventy-six citizens being
there also, the lower valley was called 'Valle de Santa Ger
trudes' and the upper one the 'Valle de San Antonio', and
in the name of the Mexican nation and of this municipality
the town site was marked out in both valleys, the one at
Santa Gertrudes being two hundred varas from North to
South and one hundred and fifty varas from East to West
leaving thirty varas outside for drippage and a common
road and the meadow for the benefit of all, with its entrances
and exits free. The site of the town of San Antonio contains
two thousand varas from North to South, and one hundred
fifty varas from East to West leaving the meadow for the
benefit of all settlers with the following entrances and exit.
On the North the Canon of the Comanches, on the South of
Casas river and in the direction of the Cebolla; Thereupon,
I proceeded to distribute the land suitable to cultivation and
drawing the line from East to West on the South side of the
valley of the Santa Gertrudes, there were measured four
thousand one hundred varas of land, and on the north, in
the direction of Tulquillo there were measured one thousand
seven hundred varas of land which were distributed among
the settlers in the order in which they are arranged on the
list. On the subsequent day we proceeded to the valley of
San Antonio, and being there, we drew the line from the
edge of the cienega toward the West, another was meas-
ured and distributed according to the list aforementioned;
two thousand eight hundred varas of land in the valley; five
hundred and sixty varas at the Lagunita; and two hundred
and fifty varas of land opposite the town towards the South-
west thereof as will appear by the aforementioned list; the
general boundaries of this tract being for the benefit of the
grantees and for common pasturage; on the north the Ocate
river; on the South to where the Sapeyo empties; on the
East the aguage de la Yegna, and on the West the Es-
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tillero and as having taken possession thereof quietly
and peacefully, and without opposition from any person

whatsoever, the grantees, in token of Joy, pulled up weeds, threw stones scattered handsfull of earth and performed other acts of possession, giving thanks to God and to the nation.

As a perpetual and binding evidence in all time to come of what has now been transacted, this title deed of grant was executed and also the particular deeds to each one, which together with this act, the petition and the superior decree thereto attached are deposited in the archives of the office of the Political Chief at Santa Fe and a copy of only what has been done by me is deposited in this office under my charge,

The list of the persons and the quantity of land to which each of them is entitled, is as follows; In the valley of Santa Gertrudes, South side measure from East to West,

Jose Tapia—one hundred varas,
Carmen Arce—one hundred and fifty varas,
Juan Lorenzo Aliso—two hundred varas,
Juan Antonio Garcia—one hundred and fifty varas,
Carlos Rinto—two hundred varas,
Mateo Ringinel—two hundred varas,
[Mannel] Suhazo—one hundred varas,
Geronimo Martin—one hundred varas,
Francisco Sandobal—one hundred varas,
Francisco Lore,—one hundred varas,
Francisco Conen—two hundred varas,
Jose Mestas—one hundred varas,
Ramon Archuleta—one hundred varas,
Antonio Aba Trujillo—one hundred varas,
Juan de Jesus Cruz—one hundred varas,
Maria Dolores Romero—two hundred varas,
Fanstin Mestas—one hundred varas,
Maria Dolores Sanches—two hundred varas,

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133 Jose Miguel Pacheco—one hundred varas,
Yladefonso Pacheco—one hundred varas,
Manuel Sanches—one hundred varas,
Juan Trujillo—two hundred varas,
Felipe Carbajal—one hundred varas,
Jose Maria Garcia—one hundred varas,
Miguel Garcia—one hundred varas,
Gabriel Lujan—one hundred varas,
Manuel Arguello—one hundred varas,
Ygnacio Gonzales—two hundred varas,
Jose Guadalupe Ortega—one hundred varas,
Felipe Arguello—one hundred varas,

Manuel Gregorio Martin—one hundred varas,
Juan Cristobal Trujillo—one hundred varas,

On the North side looking towards Tulquillo measure from East to West,

Tomas Encarnation Garcia—one hundred and fifty varas,
Carlos Salazas—one hundred and fifty varas,
Francisco Arguello—one hundred varas,
Francisco Sena—one hundred varas,
Jose Ygnacio Madrid—one hundred varas,
Miguel Paez—one hundred varas,
Manuel Paez—one hundred varas,
Miguel Mascarenas—two hundred varas,
Cecilio Montano—fifty varas,
Cruz Medina—one hundred varas,
Bernardo Martin—one hundred varas,
Miguel Arguello—one hundred and fifty varas,
Ramon Amado—one hundred and fifty varas,
Pedro Aragon—one hundred and fifty varas,
Esteban Valdez—one hundred varas,

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134 Valley of San Antonio, south side, measure from East to West,

Manuel Sanches—one hundred varas,
Juan Ygnacia Sanches—one hundred varas,
Francisco Sarracino—one hundred varas,
Albino Chacon—one hundred varas,
Damasio Chacon—one hundred varas,
Teodocio Quintana—one hundred varas,
Jose Garcia—one hundred varas,
Rafael Paez—one hundred varas,
Nepomoceno Gurule—one hundred varas,
Jose Vigil—one hundred varas,
Nestor Armijo—three hundred varas,
Andres Ormelas—one hundred varas,
Mateo Montoya—one hundred varas,
Juande la Cruz Trujillo—one hundred varas,
Juan de Jesus Lujan—one hundred varas,
Francisco Trujillo—one hundred varas,
Andres Trujillo—one hundred varas,
Juan Andres Archuleta—one hundred varas,
Ramon Abren—one hundred varas,
Jesus Maria Alarid—one hundred varas,
Vicente Sanchez—one hundred varas,
Mateo Sandebal—one hundred varas,
Juan Lopez—one hundred varas,
Pedro Chacon—one hundred varas,

Miguel Antonio Mascarenas—one hundred varas,
Antonio Arguello—one hundred varas,
Little Lake of San Antonio, measure from East to West,
Jose Silva—two hundred and eighty varas,
Juan Jose Vigil—two hundred and eighty varas,

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135 In front of the Town (Plaza) of San Antonio at (near) the hill that divides the little lake,

Miguel Olguin—two hundred and fifty varas,

The individuals above named have remained satisfied and in possession of the land of Demora, Valles de Santa Gertrudes and San Antonio, In order that the grantees may know what they possess and the boundaries of their land, copies of the proper writings will be given to them as a perpetual and binding evidence of the legality of this possession, I authorize and sign, ...
.....''Manuel Antonio Sanchez,.....
Instrumental .....
Teodocio Quintana.....
Nestor Arinijo, ...
Attending witnesses, ...
Albino Chacon, ...
Rafael Paez.....
.....''Copied August 12, 1842,... .....

''Territory of New Mexico, County of Taos

I, Manuel Antonio Sanchez, one of the Justices of the Peace within and for the County of Taos, certify that a document in all respects alike to this (and of which this is a correct copy) was executed by competent authority at La de Mora, on the day, month and year therein mentioned, and then deposited with the accompanying documents referred to in the archives of the Political Chief at Santa Fe, and I further certify, that the undersigned, now a Justice of the Peace, was at that time the same alcalde who by virtue of the authority of the laws of Mexico executed the said document in all its parts, ...
Signed and sealed with my hand and private seal, there being no public Seal at No. 7, of El Llano at my office this 3rd day of February 1857,

''Manuel Antonio Sanchez
Justice of the Peace'',

(S.S.)

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136 And Whereas it appears that said claim known as the Mora Grant was recommended for confirmation by the

said United States Surveyor General for the Territory of New Mexico, in his report to Congress dated the ninth day of July A. D. one thousand eight hundred and fifty-nine, "excepting that portion granted to John Scolly et al, and reported from this office on the 30th September 1857" (August fifteenth A. D. one thousand eight-hundred and fifty-seven,) which said report is in the words and figures as follows, to wit,

"Report

"The Town of Mora vs, The United States

This case was set for trial on the 1st of July 1859, and the parties and witnesses being present the case was taken up and acted upon on the day fixed for the investigation. On the 20th, October 1835, Manuel Antonio Sanchez, Constitutional Justice of the jurisdiction of San Jose de las Trampas, certifies that in compliance with an order issued to him by Albino Perez, political chief of the Territory, dated the 28th of September 1835, he placed the parties in possession of the vacant and unoccupied lands referred to in said decree to the petitioners therein mentioned.

The document containing the above purports to be a copy made on the 12th of August, 1842, of the original proceedings had in the premises, which is certified by Sanchez, who became a Justice of the Peace under the government of the United States on the 3d of February 1857, to be an exact copy of the original made by him in 1835. The case was argued by Messrs. Jackson & Ashurst on the part of the claimants and R. H. Tompkins Esq, United States District Attorney, on the part of the United States.

The principal objections made by the counsel for the United States, as submitted in his brief are that there is no evidence other than the testimony of Sanchez that a grant was ever made, or that it was ever seen at Santa Fe, the place of deposit and that no evidence is shown that Albino Perez had any authority to make the grant.

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137 That the witness Romero testified to the destruction of the order of Perez when it was not in his possession, nor could he have any certain knowledge that the grant was in the archives when they were destroyed. That no evidence has been produced to show that Albino Perez actually executed the order for the distribution of the land, and that the witness testifies that lands were granted by the authorities of Mora and Taos, within the limits granted to the orig-

inal grantees by Perez, showing that the Mexican authorities did not consider the grant to have been made in fee. That the failure of the petitioners to prove the execution of a grant to said lands by the competent authorities at Santa Fe with the necessary formalities to sever the land from the public domain, and the failure to prove that any such document ever existed in the archives at Santa Fe, and the evidence that no such document was found among such archives, and the failure to prove the destruction of the archives, or any portion of them at Santa Fe, at any time subsequent to 1835, tend strongly to prove that no such grant was ever made, and consequently that the lands in question were never severed from the public domain. The evidence of Sanchez, a Justice of the Peace, and one of the constituted authorities under the Mexican Government acting within the scope of his authority is deemed to be good evidence of the existence of the grant, and it is presumed that he would not arrogate to himself the authority of distributing the public domain without directions from the granting power of the country. Neither would the petitioners who were going to remove there, and expend large sums in improving the lands, be satisfied with the action of a subordinate executive officer alone, unless he was acting by authority and within the scope of his duties knowing that all their improvements would be forfeited by this action of the Justice if illegal and contrary to law.

The fact of the grant never having been seen at Santa Fe is not proven in evidence and even if it were, could have very little weight, as it was not the business of the grantees to look after the preservation and safe keeping of the original after they had received a copy duly certified to by a legal

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138 authority. That was a matter intrusted to the executive authorities at the seat of government. The original must have existed or a copy of it could not have been delivered by the Alcalde of the previous year to Miguel Mascarenas as is shown by Mascarenas's receipt. It has been clearly proven in other cases before this office that authority was vested in the political chief to make grants of land and the fact of Albino Perez having occupied that position is a matter of history, and it is well known that he was beheaded in one of the many unfortunate insurrections so prevalent in the country at that time. The witness, Romero, testifies that he saw the copy of the Mora grant, in the archives at Mora, while Thomas Lalande was Justice of the Peace in 1846. This he knows from his own knowledge; and as the archives of Mora was the proper place for it to be

deposited in and as it was to the interest of the parties interested to keep it, then the presumption is very natural that it was there when the United States troops set fire to the building, and that it was destroyed with the archives. In granting lands to a number of persons for a town site the land embraced within the limits of the grant even under the control of the constituted authorities of the town, who under the law had the right to partition out such of the vacant land as might be asked for by other parties desiring to be incorporated in the town. This partition was of course made with the consent of the original grantees, and the granting of lands to others than the original grantees by the authorities of Mora and Taos, was proper and does not prove in any manner that the grant was not made in fee. The failure to prove that the original grant ever existed at Santa Fe has no bearing on the case whatever, as it was not the business of the grantees to look after the original when it had passed from their hands to that of the Justice who was directed to place them in possession. It was sufficient for them that they were placed in possession under the original grant as certified by the Justice. Again it is well known that the archives at

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139 Santa Fe were not then, neither are they at the present day, under the particular care or custody of any particular officer of the government, especially after the change of sovereignty and it is believed that important documents have been taken from the archives at Santa Fe on more than one occasion; therefore the fact of the grant not being found in the archives is no evidence that no such grant existed; and it is hardly to be expected that the grantees should be held responsible for it after it had been returned to this place and deposited in the archives under the custody of the proper officer, whose business it was at the time to look after its safe keeping.

The evidence also shows that the town or towns embraced within the limits granted have been settled upon and occupied by the original grantees and their assigns from the date of the grant up to the present time, and large and well established settlements are growing up and flourishing there. It is not to be presumed that the government would allow the richest and most fertile portion of its territory to be usurped and taken up by a party of men without the color or shadow of law. Such was not the policy of the Mexican government at the time. There certainly was a grant, or they would not have been allowed to remain unmolested from 1835 to 1846, when the United States took possession of the country. The grant made to John Scolly and others is acknowledged by the

parties, before this office, to have been made with their consent and approval, given at the time their grant was made. Claimants in their petition refer to certain statutes and decisions a large portion of which are not in the office, neither can they be had here; therefore no reference is made to them. The instructions to this office provide that when the existence of a town is proven at the time the United States took possession of the country it is to be considered as prima facie evidence of the existence of a grant, to said town or to the persons under whom they claim. This fact also having been established in evidence, the grant is deemed to be a good and valid one and the land embraced within the metes and

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bounds set forth in the act of possession, severed from the public domain, and is therefore approved and ordered to be transmitted to Congress with the request that it be confirmed to the original grantees and those claiming under, through, or from them, excepting that portion granted to John Scolly et al, and reported from this office on the 30th. September 1857.

"Wm Pelham, Surveyor General,

Surveyor General's Office,
Santa Fe New Mexico, July 9, 1859.

Surveyor General's Office
Santa Fe, New Mexico, August 25, 1859.

The above is a true copy of the original on file in this office.
"Wm Pelham, Surveyor General"

And Whereas the report or decision of the Surveyor General of the Territory of New Mexico dated August fifteenth A. D. one thousand eight hundred and fifty-seven in the claim of John Scolly et al, is in the words and figures as follows, to wit:

"Decision.
John Scolly et al.

This case was filed on the 26th December 1856, and came on to be heard on the 3d day of April 1857. On the 27th March 1843, John Scolly, Gregorio Trujillo, Santiago Giddings, Augustin Duran, Guillermo Smith, Gabriel Allen, George H. Estes, Mateo Sandoval, Ygnacio Ortiz, Vicente Lopez and Francisco Romero petitioned Manuel Armijo civil and military governor of New Mexico for ten square leagues of land situated at the junction of the Sapello and Mora rivers, in what is now the county of Taos. On the 29th, March 1843, Manuel Armijo the governor aforesaid

granted to the petitioners the land they solicited, and directed the Justice of the Peace of Mora and Vegas to

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141 establish the boundaries and place the parties in judicial possession of the land on condition of forfeiture if the cultivation thereof was not commenced within eighteen months from the date of the grant. On the 4th, December 1844, John Scolly, Gregorio Trjifillo, Santiago Giddings, Augustin Duran, Guillermo Smith, Ygnacio Ortiz and Francisco Romero petitioned Governor Martinez, who succeeded Armijo in the government of the Territory for a confirmation of the grant made by Armijo or that a new grant be made to them the period fixed for the commencement of the settlement having expired without complying with the conditions imposed on account of the Texas invasion with which the country was threatened during the entire year previous, and also that on account of an order issued by said Governor Martinez suspending grants of a similar nature made to other individuals by Armijo, they were afraid to undertake any labor on the land after the Texas trouble had ceased, and that therefore the period limited in the grant had expired.

This petition was referred by Governor Martinez on the 9th, December of the same year to the prefect of the district of Santa Fe for the purposes provided in the colonization law of November 21st, 1828.

On the 18th, December Antonio Sena, the prefect of the district returned the proceedings in the case, and recommended that the grant be revalidated. No further action appears to have been taken in the case until the 7th May 1846, when the same parties with the exception of Ygnacio Ortiz, petitioned Manuel Armijo, who, in the meantime had been reappointed governor of the department for an extension of the time originally fixed by him, and asked that five square leagues only be given them instead of ten as originally asked for.

On the same day Governor Armijo directed the Justice of the Peace of Las Vegas to place the parties in possession of as much arable land as in their (the grantees) opinion they could cultivate, that the pastures and watering places should be common, and that they should settle upon the

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142 land within five years. On the 13th, May 1846, the Justice of the Peace of Las Vegas by virtue of the order of the governor placed the parties in possession of five leagues square of land, and returned the documents with an

official map of the measurement, made and a certificate of the possession given to the governor of the department.

The papers acted upon by this office are the originals duly authenticated by the testimony of witnesses. At the period when this grant was made the laws of the republic of Mexico concerning colonization and the reduction of the public lands to private property vested in the governors of the distant provinces of the republic such as New Mexico and California full powers to grant such petitions for land as they in their judgment, and in accordance with reports from subordinate officers should deem just, and such grants after having passed through the official forms provided by law and established by custom, were acknowledged as good and valid grants, and the land so donated was consequently completely severed from the public domain and vested in the grantees a present and absolute title to the land so granted. This principle is fully sustained by the edicts of the kings of Spain; the usages and customs of the country prior to its separation from the parent government; the laws and decrees of the Mexican government as well as the decisions of the Supreme Court of the United States in similar cases arising in Florida, Louisiana and California especially in the latter, wherein the Supreme Court in the case of Fremont vs. the United States, 17 Howard page 557, declares that there can be no question as to the power of the governor of California to make the grant".

It will be seen that the first petition asked for a grant of ten square leagues; in the third the quantity is reduced to five square leagues whereas the parties are put in possession of five leagues square, which at first sight, appears to be giving the parties more than they asked for, or expected to receive. Testimony has been introduced by the claimants to show that the terms cinco leguas cuadrados (five square leagues) and cinco leguas encuadro (five leagues square) are synonymous, and demanded that the official translation made by the translator of the office be changed so as to correspond

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143 with the amount of land the parties were placed in possession of. The terms above quoted may be synonymous in this country, where the people were not educated and therefore had no knowledge of technical or mathematical expressions, and, indeed, in our own country where a good education is within the reach of every one, many persons are ignorant of the great difference between the terms. They are far from being considered synonymous in the laws of the country in force at the time the grant was made as will ap-

pear by a single instance among many others which occur in the 'Ordenanzas de Tierras y Agnas' published in Mexico by Mariano Galvan in 1844. In giving the dimensions of a range for pasturing sheep 'Sitio de Ganado Menor' on page 72, it is stated that a 'Criadero de ganado Menor' is equal to one fourth part of a Sitio de Gando Mayor' measuring on each side one thousand six hundred and sixty-six and two thirds varas and its area contains two million seven hundred and seventy-seven thousand seven hundred and seventy-seven varas cuadradas (square varas) and seven ninths of a vara cuadrada (square vara). The only difference between the law and the petition is, that in the first the word vara is used and in the petition the word legua. The translation made in the office is therefore sustained, and the objection of the claimants overruled.

This point however is not material in deciding upon the case, as it will be seen, by reference to the grant made in 1846, that the Justice of the Peace is required to place the parties in possession of 'as much land as in their opinion they could cultivate' leaving the amount of land they were to receive entirely to their own option. The Justice of the Peace in accordance with the above order measured off and placed the parties in possession of five leagues square of land and made an official map of the land measured which was returned with the other papers in the case to the granting officer, with the certificate of possession attached; and as there is no evidence to show that any objection was made,

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144 it is to be presumed that the action of the Justice of the Peace was approved and that it was the intention to grant them five leagues square.

It is also proven in testimony that the grant has been in the undisturbed and peaceful possession and occupancy of the grantees and their representatives from the time the grant was made up to the present date.

Believing the grant to have been made in accordance with the laws of the country at the time and legally severed from the public domain, and the parties fully protected in their claim by the treaty of Guadalupe Hidalgo of 1848, as well as the decisions of the Supreme Court of the United States; the case is therefore confirmed and transmitted for the action of Congress in the premises requesting that it be confirmed to John Scolly, Augustin Duran, Guillerneo Smith, Santiago Giddings, Gregorio Trujillo and Francisco Romero.

"Wm Pelham,
Surveyor General

Surveyor General's Office,
Santa Fe, New Mexico August 15, 1857.

"Surveyor General's Office
Santa Fe, New Mexico

September 30, 1857.

The foregoing is a true copy of the original on file in this ffice.

Wm Pelham,
"Surveyor General"

And Whereas it further appears from a duly authenti-ated transcript of the certificate of juridical possession as referred to in the aforesaid report of the Surveyor General that the said claim of John Scolly and others is bounded and described therein as follows, to wit; "Having taken the grove of cottonwood which is situate on the banks of the Sapeyo near the junction as the centre where the selection was made

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45 for the settlement, I measured two and one half leagues towards the North doing the same towards the East and West establishing as the boundary of the first the foot of the Callinas mountain, on the South the cejita dulce, on the West the canon of La Jara."

And Whereas it further appears that said claim known as the Mora Grant was subsequently confirmed as number thirty-two according to the recommendation of the Surveyor General of the Territory of New Mexico in his aforesaid report dated July ninth A. D. one thousand eight hundred and fifty-nine, by the third section of the act of Congress approved June twenty-first A. D. one thousand eight hundred and sixty, entitled "An act to confirm certain Private Land Claims in the Territory of New Mexico. And Whereas there has been deposited in the General Land Office of the United States a return with the descriptive, notes and plat of the survey of the said claim, known as the Mora Grant confirmed as aforesaid authenticated by the signature of the United States Surveyor General for the Territory of New Mexico, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

Descriptive Notes
of the

Survey of the Mora Grant in the Territory of New Mexico, confirmed as private land claim number thirty-two, by act of Congress approved June 21, 1860, and surveyed in the months

of July and August 1861, by Thomas Means, United S
Deputy Surveyor, under his contract number 23 bearing
July 4, 1861, with the United States Surveyor Genera
New Mexico.

Beginning at a stone twenty-four by eleven by five i
in size, set in a mound of stone and marked ½, and o
Southeast side S. E. C. for the Southeast corner of
Grant survey, which corner is also the Northeast corn
the Las Vegas grant as described in the notes of surv
the latter and stands thirty-seven links North of the Ag
de la Yegua spring and South of the high bluff of

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146 Variation of the needle twelve degrees thirt
minutes East; latitude thirty-five degrees thirt
minutes North.

Thence North, at two chains top of rock bluff. A
chains rocky arroyo, course Southeast. At fifteen c
ascend rocky bluff. At twenty-five chains top of mesa.
one mile a mound of earth. At two miles a mound of
with a pond of water thirty-two links East. At two
five chains a sink or low place in the plain. At two
fifteen chains, edge of pond. At two miles sixty-five c
ascend prairie. At three miles a mound of earth. At
miles a mound of earth—variation of the needle twelv
grees thirty-six minutes East. At five miles a moun
earth. At five miles ten chains twenty-two links a m
of earth at intersection of fourth correction line N
twenty-three chains twenty-seven links West of quarter
tion corner in Section thirty-two in range twenty-one
At six miles a mound of earth. At seven miles a mou
earth. At eight miles a mound of earth. At eight
twenty-five chains a low place in prairie. At eight-
forty-five chains some rocks on point of prairie. At
miles seventy-five chains many rocks on east side of
rise. At nine miles a stone fourteen by twelve by four i
in size, marked 9 E. B. in mound of stones. At ten
place for tenth mile corner in dense thicket, corner no
At eleven miles a mound of earth, variation of the n
twelve degrees twenty-seven minutes East. At twelve
a mound of earth. At twelve miles twenty chains de
towards canon. At twelve miles forty-one chains fifty
edge of rocky bluff. At twelve miles forty-five chains,
bluff over South edge of corner. At thirteen miles plac
thirteenth mile corner not set, in canon of nearly perpen
lar sides, sixty feet high of rock, and in which is a st
of water forty-five links wide running nearly East.
thirteen miles fifteen chains five links a large rock on

side of canon marked 13, 15, 05 chs E. B. At thirteen miles twenty-four chains, prairie. At fourteen miles a mound of earth. At fifteen miles a mound of earth upon an elevated part of prairie. At sixteen miles a mound of earth

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147 on South edge of a wide canon. At sixteen miles seventy-two chains, South bank of Mora river, one hundred and fifty links wide, course Southeast, perpendicular rock walls seventy-five feet high on East side. At seventeen miles a stone seventeen by eleven by four inches in size marked 17 E. B. in mound of stones. At seventeen miles fifty-three chains, fifty-six links a stone twenty-four by sixteen by four inches in size in mound of stones and marked E. B. on top of bluff on North edge of said wide canon. At eighteen miles a mound of earth. At nineteen miles a mound of earth. At twenty miles a mound of earth. At twenty-one miles a mound of earth—variation of the needle twelve degrees thirty-nine minutes East. At twenty-two miles a mound of earth. At twenty-three miles a mound of earth. At twenty-three miles forty chains descent from plain to rocky place. At twenty-three miles fifty-four chains twenty-five links top of rocky mesa—variation of the needle seventeen degrees thirty minutes East. At twenty-three miles sixty-four chains, descent to plain from mesa. At twenty-four miles a mound of earth in a hollow on a trail bearing east and west. At twenty-four miles forty-five chains a level low prairie. At twenty-five miles a mound of earth. At twenty-six miles a mound of earth—variation of the needle thirteen degrees thirty-nine minutes East. At twenty-seven miles a mound of earth. At twenty-seven miles eleven chains fifty-links road between Independence Missouri, and Santa Fe, New Mexico, bearing Northeast and Southwest. At twenty-seven miles forty chains ascent to mesa. At twenty-eight miles a mound of earth. At twenty-eight miles fifteen chains an arroyo with water bearing Northeast and Southwest. At twenty-nine miles a stone sixteen by nine by four inches in size in mound of stones. At twenty-nine miles eleven chains sixteen links a stone in mound of stones at intersection with fifth correction line North twenty-three chains sixteen links West of quarter section corner in Section thirty-two in range twenty-one East. At twenty-nine miles forty chains a rocky point between two mesas sixty feet high seventeen chains apart to East and West of line, the mound East conical and the one West cubical in shape. At thirty miles a stone thirteen by nine by six inches in size in mound of stones and marked 30 E. B. At thirty-one miles

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148 a mound of earth—variation of the needle twelve degrees thirty-nine minutes East. At thirty-two miles a large mound of earth. At thirty-three miles a mound of earth. At thirty-four miles a mound of earth, ground round about covered with scoria or black stone. At thirty-five miles a mound of earth. At thirty-five miles eleven chains fifty links a rocky canon. At thirty-five miles twenty-five chains an open level prairie. At thirty-six miles a mound of earth. At thirty-six miles seven chains fifty links eastern abrupt termination of plain. Another twenty feet lower extends to the east. At thirty-six miles forty chains much scoria on ends of mesa; same variation of needle. At thirty-six miles forty-one chains descent to another plain. At thirty-six miles seventy chains Apache road from Santa Fe to Independence, bearing Northeast and Southwest at thirty-seven miles a mound of earth. At thirty-seven miles sixty-eight chains, bluff of mesa. At thirty-eight miles a stone twenty-four by sixteen by ten inches in size in mound of stones and marked 38 E. B. in canon or opening between mesas. At thirty-eight miles twenty-five chains eastern termination of a plain in abrupt mesa. At thirty-eight miles seventy-two chains forty-three links a point whence triangulate down bluff into plain one hundred and twenty feet lower. At thirty-nine miles place for thirty-ninth mile corner, inaccessible. At forty miles place for fortieth mile corner inaccessible. At forty miles thirty-six chains twenty-three links a large mound of earth. At forty-one miles a mound of earth. At forty-one miles forty chains level prairie. At forty-two miles a mound of earth. At forty-two miles forty chains descent towards the Ocate river. At forty-three miles a mound of earth. At [forth-three] miles five chains fifty links a large mound of earth, with two pits east on the South and right bank of the Ocate river, course nearly East, twenty-five links wide, no running water, this mound being the Northeast corner of the Mora Grant survey, variation of the needle thirteen degrees forty-five minutes East, latitude thirty-six degrees thirteen minutes North.

Thence on North boundary of Mora grant by meander up stream along the South and right bank of the Ocate river South sixty-four and one half degrees West one hundred and twenty-three chains eighty-four links; thence South forty-three and three quarters degrees West eighty-six chains fifty links; thence South sixty degrees West thirty-

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149 nine chains forty-two links; thence South eighty-one and one half degrees West twenty-eight chains six links; thence South fifty-three and three quarters degrees West twenty-six chains ninety-three links; thence South

hirty-three and one half degrees West nineteen chains fifeen links; thence South seventy-seven and one half degrees West sixteen chains eighty-nine links; thence South thirteen and one half degrees West forty-five chains ten links; thence South sixty-two and one-half degrees West forty-one chains twelve links; thence South eighty-three and three quarters degrees West twenty-six chains ninety-six links; thence South fifty-six and one quarter degrees West twenty-seven chains fourteen links; thence South thirty-two and three quarters degrees West twenty-six chains fifty links; thence South seventy-two degrees West twenty-one chains thirty-two links; thence South fifty and three quarters degrees West twenty-five chains thirty-eight links; thence South twenty-six and one quarter degrees West twenty-eight chains thirty-seven links; thence South eighty-six and one quarter degrees West forty-four chains eighty-four links; variation of the needle thirteen degrees thirty-one minutes East latitude thirty-six degrees nine minutes North, Thence South seventy-nine and one half degrees West twenty chains twenty-seven links; thence South forty-four and three quarters degrees West twelve chains ninety links; thence North eighty-two and one half degrees West forty-three chains; thence North sixty-two and one half degrees West twenty chains seventy-five links on which course and distance at six chains forty links a canon one hundred and twenty-five links wide; thence North twenty-one and three quarters degrees East twenty-five chains ninety links; thence North thirty and one quarter degrees West nine chains seven links; thence North sixty-one and three quarters degrees West twenty-one chains forty-seven links; thence West thirty-seven chains twenty-six links; thence South seventy and one half degrees West thirty-three chains eighty-eight links; thence North seventy-six and one quarter degrees West twenty-one chains sixty links; thence North eighty-four

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150 degrees West sixteen chains eighty-three links; thence north eighty-four and one half degrees West eleven chains six links; thence north fifty-nine and one quarter degrees west nineteen chains sixty-two links on which course and distance, at nine chains road between Fort Union and Rayado bearing Northeast and Southwest, and at end of course and distance, road leading to Mora bearing nearly East and West, thence North nine and one half degrees East fourteen chains; thence north eighty-one and three quarters degrees West seventeen chains forty links; thence north fifty-seven degrees West fifteen chains ninety-one links; thence South sixty-four and one half degrees West nineteen chains seventeen links; thence north sixty-five and one

quarter degrees West thirty-three chains eight links, on which course and distance at twenty-seven chains fifty links a house three hundred and eighty links South of line; thence North seventy-nine and one half degrees West forty-five chains forty-three links; thence North eighty degrees west thirty-nine chains seven links end of Mesa, South of and close to line; thence North sixty-four and three quarters degrees West twenty-one chains sixty links and entrance to canon between mesas; thence North seventy-four degrees West fifty-one chains sixty-two links on which course and distance at thirty-seven chains fifty links a house seven hundred and thirty links North of line; thence North eighty-five degrees West forty chains eighty-eight links; thence north sixty-one and three quarters degrees West fifty-four chains four links where river passes between mesas and mountains; thence North seventy degrees West eighteen chains five links; thence North seventy-six and three quarters degrees West forty-nine chains forty-four links where the river passes between high mountains and mesas and on which course and distance at forty chains a road bearing Northwest and Southeast, thence North seventy-five and one quarter degrees West thirty-seven chains seventy-five links on which course and distance at twenty-chains a stream from the Northwest enters the Ocate river and on the fork of streams on North bank stands the house of Mr. Williams and at twenty-nine chains thirty-links on North bank stands the house of Mr. Jones; thence North

—21—

151 eighty-five degrees West forty chains thirty-three links; thence North eighty-nine and three quarters degrees west fifty-four chains forty-one links; thence South seventy-three and one half degrees West thirty-one chains sixty links; thence North sixty-nine degrees West thirty-one chains fifty links; thence North forty-eight and three quarters degrees West fifty chains ten links, thence North forty and one half degrees West fifty-eight chains thirty-four links on which course and distance twenty-three chains a house on right bank of river. At thirty-three chains twenty [link] a house on right bank of river and at forty-three chains seventy-five links, a house on right bank of river; thence north eighteen degrees West forty-three chains fifty-three links; thence North twenty and one half degrees West fifty chains thirty-six links, on which course and distance at forty chains the small town of Gallinas fifteen chains to North of line; thence North thirty degrees West fifty-one chains sixty-two links—variation of the needle thirteen degrees thirty-three minutes East; thence North sixty-five and one quarter degrees West one hundred and seventy-three chains eighty-three links on which course and

stance at one hundred and seventeen chains fifty links the
ouse of Manuel Lucero; thence North thirty-three and one
uarter degrees West thirty-three chains seventy-four links
here the river passes the West side of a high mesa; thence
orth forty-five degrees West nineteen chains; thence North
wenty-two degrees West fifteen chains where the river runs
hrough a deep canon; thence North fourteen and one-half
egrees West six chains seventy-two links; thence North
hirty-one degrees West fourteen chains; thence North
wenty and three quarters degrees West ten chains fifty
nks, thence North seventy-two and one half degrees East
wo chains ninety-six links; thence North twenty-one and
ne half degrees West thirteen chains eighty-five links;
hence North two degrees West six chains seventy-eight
nks; thence North fifteen and three quarters degrees West
ve chains nine links; thence North thirty-two degrees West
our chains seventy-one links; thence, North fifty-two and
ne quarter degrees West three chains sixty-six links; thence
orth forty-eight degrees West two chains eighty-six links;
hence North thirty-four degrees West nineteen chains

—22—

52 thirty-nine links; thence North forty-four degrees West twelve chains; thence North thirty-one and one alf degrees. West nineteen chains sixty-six links where re high mountains on both sides of river; thence North five egrees West eight chains fifty links; thence North five and ne half degrees West eleven chains eighty-one links; thence North one and one fourth degrees East twenty-one chains wenty-six links; thence North twenty and three quarters egrees East twelve chains; thence North forty degrees East ourteen chains fifty links; thence North twenty and one alf degrees East forty chains ninety-links; thence North wenty-nine and one half degrees East eighteen chains; hence North fifty-one and one quarter degrees West nine-een chains thirty-four links; thence North seventy-two and ne half degrees West thirteen chains twenty-two links; hence North eighty-eight and one half degrees West three hains; thence North fifty-eight and one quarter degrees West ten chains forty-four links; thence South eighty-six egrees West four chains eighty-five links; thence North ighty-four and three quarters degrees west seven chains wenty-seven links; thence North forty-nine and three quar-ers degrees West three chains ninety-two links; thence North twenty-six degrees West eighteen chains eighteen inks; thence North thirty-five degrees west twenty-eight hains seventy-three links; thence North sixty-four degrees West fifteen chains eighty-nine links; thence North fifty and ne half degrees West twenty-five chains forty-six links;

thence North thirty-eight degrees West sixty-five chains twenty-five links where the Ocate river becomes invisible, lost to view in the Mountains, Latitude thirty-six degrees eighteen minutes North.

Thence North seventy-nine and three quarters degrees West twenty-two chains eight links; thence North seventy-nine degrees West eight chains sixty-seven links; thence South seventy-four and one quarter degrees West two chains thirty-three links; thence South seventy-one and one quarter degrees West thirty-one chains seven links a stone sixteen by twelve by two inches in size in mound of stones and marked N. B. on which course and distance at fifteen chains a pond South of line, about ten chains in diameter; thence South eighty and one one half degrees West seventeen chains sixty links a mound of earth on

—23—

153 which course and distance at ten chains a wagon road leading to Taos road at this point bearing Southwest; thence North eighty-six and one half degrees West thirty-one chains fifty-nine links a stone thirteen by nine by four inches in size in mound of stones and marked N. B. on which course and distance at eleven chains fifty links the South edge of a pond; thence South eighty-eight and one quarter degrees West thirty-six chains thirty-three links a stone twelve by nine by five inches in size in a mound of [stone] and marked N. B., thence South seventy-nine degrees West forty-three chains twenty-nine links a stone seventeen by eight by five inches in size in a mound of stones and marked N. B., thence South seventy-five and one half degrees West thirteen chains eighty links a mound of stones; thence South forty-six and one quarter degrees West three chains forty links a mound of stones; thence South forty-eight and one quarter degrees West seventy-one chains a mound of stones; thence South eighty-nine degrees West fifty-five chains ten links a mound of stones on which course and distance at thirty-five chains a wagon road bearing Northwest leading to Taos; thence South seventy-one and one half degrees West one hundred and seventeen chains thirty-five links on which course and distance at twenty-two chains twenty-five links Coyote river seventy-five links wide, course here Northwest and at the end of which course and distance a large mound of earth standing seventy-nine miles seventy-five chains seventy-four links from beginning at southeast corner and ten miles forty chains fifty-four links east of the Northwest corner of Mora grant inaccessible in the mountain —variation of the needle twelve degrees thirty-six minutes east; latitude thirty-six degrees sixteen minutes North; thence from said large mound West ten miles forty chains

y-four links to point for Northwest corner of the Mora
nt inaccessible in the mountain and not set which point is
ety miles thirty-six chains twenty-eight links from the
ginning at the Southeast corner.

Thence South from said point for Northwest corner. At
rteen miles seven chains forty-one links on course, or one
ndred and three miles forty-three chains sixty-nine links

—24—

from beginning, a stone thirty by nineteen by seven
inches in size in large mound of stones and marked
B. M. G. and on West side EO., from which mound an
en tree twelve inches diameter bears North seventy-four
l one half degrees East one hundred and seventy links
tant which tree bears cut in it the letters W. B. M. G.
l the word Estillero and from which mound a pine tree
enteen inches diameter bears North three hundred and
enty-one links distant and which tree bears cut in it on
East side the letters W. B. M. G. and the word Estillero
l at the east side of which tree is a stone twenty by twelve
three inches in size in a mound of stone and marked
B. M. G. At thirteen miles nine chains seventy-one links
trail to Picuris, bearing Northwest. At thirteen miles
enty-five chains fifty-nine links the Pueblo river bearing
rthwest and southeast. At thirteen miles forty-one chains
ety-one links at foot of high mountain a stone eighteen
twelve by five inches in size in a mound of stones and
arked W. B. M. G. At thirty-three miles thirty-three
ains twenty-nine links on course or one hundred and
enty-three miles sixty-nine chains fifty-seven links from
ginning. Southwest corner of the Mora grant, a stone
enty by fourteen by six inches in size in a mound of stones
d marked S. W. C. M. G. and standing on edge of a high
ountain on left bank of the Sapello river one hundred and
ty-two links North of the stream.

Thence from said Southwest corner of the Mora grant by
eanders of the Sapello river down stream on right bank
uth seventy-one and one quarter degrees East eight chains
enty links; thence South eighty-three degrees East five
ains forty links; thence North sixty-five degrees East
ree chains twenty-four links; thence South eighty seven
d three quarters degrees East four chains seventy-five
nks; thence South eighty degrees East eight chains twenty-
ve links; thence South seventy-six degrees East ten chains
venty-seven links; thence South forty-eight and one half
egrees East three chains eighty-eight links; thence North
eventy-three degrees East five chains fifteen links; thence

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155 South eighty-six degrees East two chains fifty links; thence south seventy-eight and one quarter degrees East four chains twenty links; thence South fifty-seven degrees East six chains fifty links; thence South seventy-two and one half degrees East eleven chains twenty-two links; thence North eighty-nine and one half degrees East five chains forty links; thence South eighty-four degrees East eight chains ninety links; thence South seventy-nine and three quarters degrees East twelve chains; thence South sixty-two and one half degrees East, nine chains twenty links; thence North eighty-four degrees East seven chains twenty-five links; thence South seventy-nine degrees East five chains sixteen links; thence South seventy-four degrees East four chains thirty-seven links; thence North eighty-eight and one quarter degrees East seventeen chains twenty-eight links; thence South seventy-five degrees East ten chains thirty links; thence South eighty-seven and one half degrees East eight chains sixteen links; on which course and distance at five chains eighty-one links cross Sapello river to left bank; thence South eighty-seven degrees East two chains fifty-five links; thence South seventy-one and one half degrees East five chains a stone being the Northwest corner of the Las Vegas grant survey from which corner an oak tree ten inches in [dieamter] bears North eighty-five and one half degrees West one hundred and sixty links distant; and which corner stands one hundred and twenty-three miles sixty-nine chains fifty-seven links from beginning point of the Mora grant survey.

Thence from said Northwest corner of the Las Vegas grant survey by meanders of the Sapello river down stream South seventy degrees east seventy-six chains; thence South forty-six degrees East one hundred and twenty-nine chains fifty links; thence South fifty-two and one half degrees East twenty-five chains; thence South seventy-three degrees East twenty-five chains; thence North eighty-five degrees East forty-three chains fifty links; thence North seventy-one degrees East thirty-two chains fifty links; thence South eighty and one quarter degrees East fifty-four chains; thence South

—26—

156 eighty-four degrees East thirty-eight chains, thence North sixty-nine degrees East seventeen chains fifty links; thence North eighty-three degrees East twenty-two chains; thence South sixty-seven degrees East fifty-chains fifty links; thence South eighty-one degrees East thirty-two chains fifty links; thence North eighty-four degrees East sixty-seven chains; thence North fifty-five degrees East fifty-seven chains; thence South fifty-eight degrees East one hundred and thirteen chains; thence South sixty-seven degrees

ast two hundred and ten chains; thence East eighty chains; ence South fifty-six degrees East one hundred and twenty- ven chains; thence North sixty-eight degrees East twenty- ur chains thirty-one links; thence South seventy-one de- rees East fourteen chains; thence North seventy degrees ast thirty-one chains fifty links; thence North seventy-nine egrees East nine chains; thence North fifty-two degrees ast twelve chains fifty links; thence North nine degrees est six chains fifty links; thence North forty-seven degrees ast twenty-one chains fifty links; thence South eighty-four egrees East thirty-one chains; thence North sixty degrees ast two hundred and seventy-four chains; thence north rty-five degrees East forty chains fifty links; thence North xty-six degrees East thirty-three chains fifty links; thence outh fifty-six degrees East twenty-four chains; thence outh seventy degrees East sixty-one chains fifty links; ence South eight degrees East twenty-one chains; thence outh thirty-seven degrees East sixty-nine chains fifty links; ence North twenty-six degrees East seventy chains; thence orth sixty-three degrees East ninety chains; thence North irty-nine and one half degrees East one hundred and irty-eight chains; thence North seventy-five degrees East irteen chains; thence North thirty-eight degrees East four- en chains seventy-four links; a stone mound with a rock arked + the northeast corner of the Las Vegas grant sur- ey standing at the [mount] of the Sapello river, one hun- red and fifty-three miles thirty-eight chains seventy-five nks from the beginning point of the Mora grant survey.

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57 Thence from said corner at the mouth of the Sapello river South forty-one and one quarter degrees East. t twenty-one chains forty-eight links a stone and mound. t one mile twenty-one chains forty-eight links a stone and ound. At two miles twenty-one chains forty-eight links a one and mound. At three miles twenty-one chains forty- ght links a stone and mound. At four miles twenty-one ains forty-eight links a stone and mound. At five miles enty-one chains forty-eight links a stone and mound. At x miles twenty-one chains forty-eight links a stone and ound. At seven miles twenty-one chains forty-eight links stone and mound. At seven miles seventy-one chains irty-eight links intersection of line between townships eventeen and eighteen North in Range nineteen East eleven ains sixty-one links East of three miles corner. At eight iles twenty-one chains forty-eight links a stone and mound. t nine miles twenty-one chains forty-eight links a stone nd mound. At ten miles twenty-one chains forty-eight links stone and mound. At eleven miles twenty-one chains

forty-eight links a stone and mound. At twelve mi
twenty-one chains forty-eight links a stone and mound.
thirteen miles twenty-one chains forty-eight links a st
and mound. At fourteen miles twenty-one chains for
eight links a stone and mound. At fifteen miles twenty-
chains forty-eight links a stone and mound. At sixteen mi
twenty-one chains forty-eight links a stone and mound.
seventeen miles twenty-one chains forty-eight links a st
and mound. At eighteen miles twenty-one chains for
eight links a stone and mound. At nineteen miles twen
one chains forty-eight links a stone and mound. At twe
miles twenty-one chains forty-eight links on this course
one hundred and seventy-three miles sixty chains twen
three links from the beginning the Southeast corner of
Mora grant, the place of beginning containing eight hund
and twenty seven thousand six hundred and twenty-
acres, and one one-hundredth of an acre.

In witness whereof I have hereunto signed my name
cially, at my office at the City of Santa Fe in the Territ
of New Mexico, this the seventh day of June, one thousa
eight hundred and seventy-six.

"H. M. Atkinson
United States Surveyor General"

—28—

158 Now Know Ye That the United States of America
consideration of the premises and pursuant to
second section of the Act of Congress approved the third
of March Anno Domini one thousand eight hundred
sixty-nine entitled "An Act to confirm certain private l
claims in the Territory of New Mexico" Have Given
Granted and by these presents Do Give and Grant unto
said Jose Tapia, Carmen Arce, Juan Lorenzo Aliso, J
Antonio Garcia, Carlos Rinto, Mateo Ringinel, Manuel
hazo, Geronimo Martin, Francisco Sandobal, Francisco L
Francisco Conen, Jose Mestas, Ramon Archuleta, Anto
Aba Trujillo, Juan de Jesus Cruz, Maria Dolores Rom
Faustin Mestas, Maria Dolores Sanches, Jose Miguel
checo, Yldefonso Pacheco, Manuel Sanches, Juan Truji
Felipe Carbajal, Jose Maria Garcia, Miguel Garcia, Gab
Lujan, Manuel Arguello, Ygnacio Gonzales, Jose Guadal
Ortega, Felipe Arguello, Manuel Gregorio Martin, Juan C
tobal Trujillo, Tomas Encarnacion Garcia, Carlos Sala
Francisco Arguello, Francisco Sena, Jose Ygnacio Mad
Miguel Paez, Manuel Paez, Miguel Mascarenas, Cecilio M
tano, Cruz Medina, Bernardo Martin, Miguel Arguello,
mon Amado, Pedro Aragon, Esteban Valdez, Manuel S

es, Juan Ygnacio Sanches, Francisco Sarracino, Albino acon, Domasio Chacon Teodocio Quintana, Jose Garcia, fael Paez, Nepomoceno Gurule, Jose Vigil, Nestor Armijo, ndres Ornelas, Mateo Montoya, Juan de la Cruz Trujillo, an de Jesus Lujan, Francisco Trujillo, Andres Trujillo, an Andres Archuleta, Ramon Abren, Jesus Maria Alarid, icente Sanchez, Mateo Sandobal, Juan Lopez, Pedro Cha- n, Miguel Antonio Mascarenas, Antonio Arguello, Jose lva, Juan Jose Vigil and Miguel Olguin and to their heirs d assigns the tract of land embraced and described in the regoing survey excepting and reserving from the transfer these presents so much of said survey as may be found be embraced in the claim for twenty-five square leagues land of John Scolly et al, as recommended for confirma- on by the Surveyor General of the Territory of New exico in his aforesaid report of fifteenth August A. D. one ousand eight hundred and fifty-seven and with the stipula- on that the United States herein expressly reserves to itself e buildings and improvements situated on the Fort Union

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59 Military and Timber Reservations as at present established, together with the possession and use of the ame and the right to remove said buildings and improve- ents upon the discontinuance or abandonment of said res- rvations by the United States, and with the further stipula- ion as provided in the fourth Section of the aforesaid Act f Congress approved twenty-first June A. D. one thousand ight hundred and sixty. "That the foregoing confirmation hall only be construed as quit claims or relinquishments on he part of the United States and shall not affect the adverse ights of any other person or persons whomsoever."

To Have and To Hold the said tract of land with the ap- urtenances unto the said Jose Tapia, Carmen Arce, Juan orenzo Aliso, Juan Antonio Garcia, Carlos Rinto, Mateo Ringinel, Manuel Suhazo, Geronimo Martin, Francisco San- obal, Francisco Lore, Francisco Conen, Jose Mestas, Ramon rchuleta, Antonio Aba Trujillo, Juan de Jesus Cruz, Maria olores Romero, Faustin Mestas, Maria Dolores Sanches, Jose Miguel Pacheco, Yldefonso Pacheco, Manuel Sanches uan Trujillo, Felipe Carbajal, Jose Maria Garcia, Miguel arcia, Gabriel Lujan, Manuel Arguello, Ygnacio Gonzales, Jose Guadalupe Ortega, Felipe Arguello, Manuel Gregorio Martin, Juan Cristobal Trujillo, Tomas Encarnacion Garcia, Carlos Salazar, Francisco Arguello, Francisco Sena, Jose gnacio Madrid, Miguel Paez, Manuel Paez, Miguel Masca- énas, Cecilio Montano, Cruz Medina, Bernardo Martin, Mi- uel Arguello, Ramon Amado, Pedro Aragon, Esteban Val- dez, Manuel Sanches, Juan Ygnacio Sanches, Francisco Sar-

racino, Albino Chacon, Damasio Chacon, Teodocio Quintana Jose Garcia, Rafael Paez, Nepomoceno Gurule, Jose Vigil Nestor Armijo, Andres Ornelas, Mateo Montoya, Juan de la Cruz Trujillo, Juan de Jesus Lujan, Francisco Trujillo. Andres Trujillo, Juan Andres Archuleta, Ramon Abron, Jesus Maria Alarid, Vicente Sanchez, Mateo Sandobal, Juan Lopez Pedro Chacon, Miguel Antonio Mascarenas, Antonio Arguello, Jose Silva, Juan Jose Vigil and Miguel Olguin and to their heirs and assigns forever, with the exception, reserva-

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160 tion and stipulations aforesaid.

In Testimony Whereof, I, Ulysses S. Grant, President of the United States have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this fifteenth day of August, in the year of
(L. S.) our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one [one] hundred and first.

By the President U. S. Grant
By D. D. Cone, Secretary,

S. W. Clark, Recorder of the General Land Office.

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TOO

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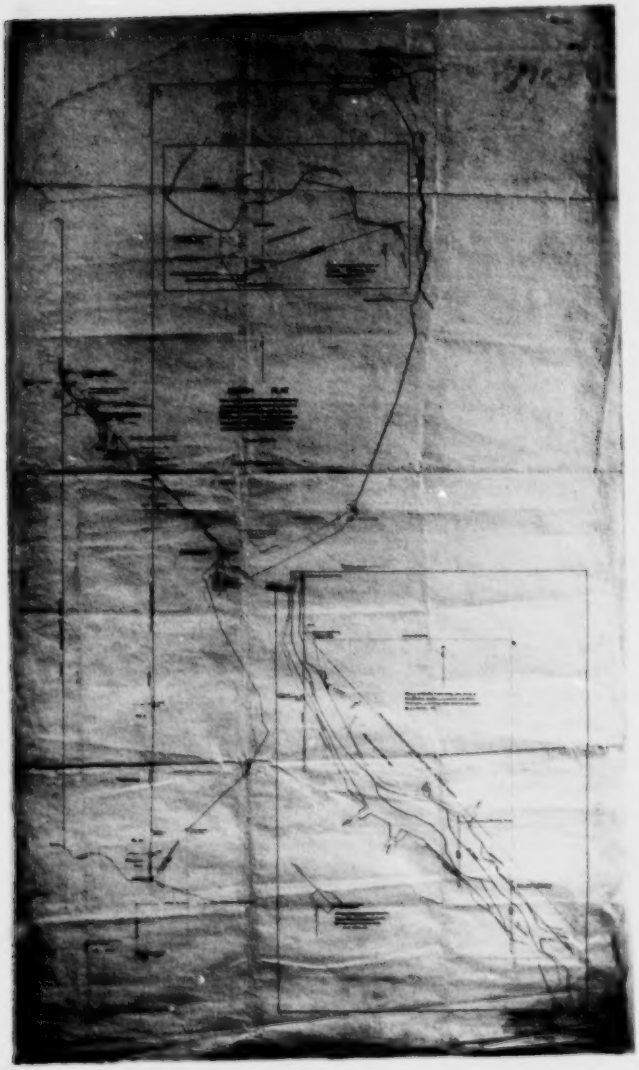
FOR

FILMING

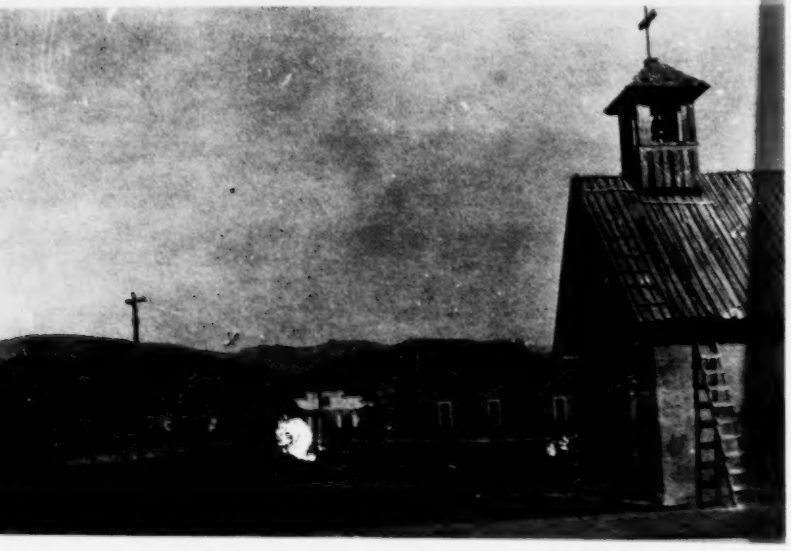
(Plaintiff's Exhibit 30, Map prepared by G. D. D. Kirkpatrick.)



64 (Defendants' Exhibit A. Topographical Map of the upper valley of the Rio Pueblo showing western boundary of Mora Grant.)

165 (Plaintiff's exhibit 47, Photograph taken at Cleveland showing gap in mountain where Picurio Trail passes through.)

(Plaintiff's Exhibit 46, Photograph showing church, etc., and mountains in distance.)



(Defendants' Exhibit C, Photograph of blazed tree.)

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168 Clerk's Certificate.

United States of America,
District of New Mexico. } ss:

I, Wyly Parsons, Clerk of the District Court of the United States for the District of New Mexico, do hereby certify that the above and foregoing transcript, consisting of 167 pages, constitutes a full and true transcript of the record and proceedings in said cause, as indicated by plaintiff's praecipe for transcript on page 87 thereof; that the exhibits set out at pages 89 to 167 inclusive, are referred to in the Statement of the Evidence approved by the court and a part of this transcript at page 14 et seq. thereof, and are the copies of exhibits mentioned in said statement; that the original exhibits, Plaintiff's Exhibit 30 and Defendant's Exhibit A, are transmitted herewith (not attached to this transcript, however), and are the original exhibits introduced in evidence on the trial of said cause, as indicated by the notation of the Stenographer, and the Clerk's file mark thereon:

—all as shown from the files and record of my office.

Witness my hand and the seal of said court, at Santa Fe, in said District, this 6th day of May, A. D. 1922.

WYLY PARSONS
(Seal) Clerk.

Filed May 10 1922 E. E. Koch Clerk

156 *Appearances.*

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Mr. S. W. Williams, special assistant to the Attorney General, as counsel for appellant.)

Filed May 15, 1922.

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, Appellant,
vs.
STATE INVESTMENT COMPANY ET AL. } No. 6088.

The clerk will enter my appearance as counsel for the appellant.

S. W. WILLIAMS,
Spl. Asst. to the Atty. Genl.

[File endorsement omitted.]

(Appearance of Mr. George R. Craig, United States attorney, as counsel for appellant.)

Filed July 1, 1922.

The clerk will enter my appearance as counsel for the appellant.

GEORGE R. CRAIG,
Albuquerque, New Mexico.

[File endorsement omitted.]

157 (Appearance of Mr. John McPhaul, chief law clerk, General Land Office, as counsel for appellant.)

Filed September 13, 1922.

The clerk will enter my appearance as counsel for the appellant.

JOHN MCPHAUL,
Gen. Land Office, Washington, D. C.

[File endorsement omitted.]

(Appearance of Mr. S. B. Davis, jr., as counsel for appellees.)

Filed May 15, 1922.

The clerk will enter my appearance as counsel for the appellees.

S. B. DAVIS, JR.,
East Las Vegas, New Mexico.

[File endorsement omitted.]

(Appearance of Mr. Charles W. G. Ward as counsel for appellees.)

Filed June 26, 1922.

The clerk will enter my appearance as counsel for the appellees.

CHARLES W. G. WARD,
Las Vegas, New Mexico.

[File endorsement omitted.]

158 (Appearance of Mr. A. T. Rogers, jr., as counsel for appellees.)

Filed July 14, 1922.

The clerk will enter my appearance as counsel for the appellees.

A. T. ROGERS, JR.,
East Las Vegas, New Mex.

[File endorsement omitted.]

In U. S. Circuit Court of Appeals.

Order of submission.

September Term, 1922, Wednesday, September 13, 1922.

This cause having been called for hearing in its regular order, argument was commenced by Mr. S. W. Williams, special assistant to the Attorney General, for appellant, continued by Mr. S. B. Davis, jr., for appellees, and concluded by Mr. John McPhaul, chief law clerk, General Land Office, for appellant.

Thereupon, this cause was submitted to the court on the transcript of the record from said District Court and the briefs of counsel filed herein.

159 United States Circuit Court of Appeals, Eighth Circuit.

Opinion.

Filed Nov. 9, 1922.

No. 6088.—September term, A. D. 1922.

[Title omitted.]

Mr. S. W. Williams, special assistant to the Attorney General, and Mr. John McPhaul, chief law clerk, General Land Office, for appellant.

Mr. S. B. Davis, jr. (Mr. A. T. Rogers, jr., and Mr. C. W. G. Ward were with him on the brief), for appellees.

Before Lewis and Kenyon, Circuit Judges, and Youmans, District Judge.

LEWIS, Circuit Judge, delivered the opinion of the court.

This suit was brought by appellant to quiet its claimed title to strip of land about three and a half miles wide along the west ndary of the Mora grant, in New Mexico. Appellees, in their swer, claimed title as owners of the grant and asked that it be eted in them, and decree was in their favor. The west boundary the grant and the east boundary of appellant's forest reserve ncide. Appellant claims that the strip of land is west of that line and outside the grant, while appellees claim that it is east of that line and within the grant. So that the one controverted question of fact is as to the true location of that e. The grant was made in 1835, and after change of sovereignty er the Territory it was confirmed by act June 21, 1860 (12 Stat.). As originally made, its boundaries were given in these gen- l terms: "On the north the Ocate River; on the south to where Sapeyo empties; on the east the Aguage de la Yegua; and on west the Estillero."

In 1876 U. S. patent issued by which all rights and interests of United States in the grant were quitclaimed to Jose Tapia et their heirs and assigns. But before that the surveyor general New Mexico employed Thomas Means to survey its outer bound- es, which he did in 1861, a large part of the west boundary e being projected over the mountains by triangulation. His sur- was approved and followed in the patent description. A plat de from that survey showing boundary lines of the grant was d in the Land Office and referred to in the patent. Means started the southeast corner and ran a line north for the east boundary til he reached the Ocate River; thence, for the north boundary, that river westerly to the mountain range extending north and th, where he raised a large mound of earth, now lost, and tied to permanent natural objects, reporting this mound as being 10 les 40 chains and 54 links (by calculation) east of the northwest ner of the Mora grant, inaccessible in the mountains. He had ated the Estillero on the west boundary, and meandering along eastern slope to the southwest he made a traverse from the und of earth to the Estillero. He continued his traverse south the east side of the range to Rio Sapello (Sapeyo), and finding northwest corner of the Las Vegas grant on the south side of t river, reported: "From this point the SW. cor. of Mora grant, calculation, is due west 2 m. 3.10 chs., inaccessible, a line pass- through the Estillero N. & S. will intersect the Rio Sapello 2 les, 3.10 chs. west of the NW. cor. of Las Vegas grant, which point intersection is the SW. cor. of Mora grant." Three months later, dently relying on his calculation for the SW. corner, he started the northwest corner of Las Vegas grant (according to his field notes) and ran 2 miles, 3.10 chs. west up Rio Sapello, where he set a stone 20 x 14 x 6 inches marked S. W. C. M. G., for southwest corner of Mora grant, on the left bank 1.52 chs.

north from stream on edge of high mountain on south side, and reported that he could not produce the line further north on west boundary. That stone has never been found and that corner is lost. At the same time he returned to the Estillero. The court found from the evidence, and the finding is amply supported, that the Estillero "is a place in the valley of the Pueblo River extending down the valley of the Pueblo River from the Cannon de los Abequesenos or Canon de los Ratones on said river to the Angostura de los Caballos along said river for a distance of about 2½ miles." It is just west of a gap in the range. There Means set a stone 30 x 19 x 7 inches marked on the east side W. B. M. G., for west boundary of Mora grant, and on the west side EO for Estillero, and around this stone he raised a large mound of stones for point on west boundary of grant. He gave this stone two ties, one a pine tree 17 inches in diameter north 3.71 chs., and at the east side of the tree set a stone 20 x 12 x 3 inches marked W. B. M. G. in a mound of stones at base of a high, rough mountain, over which he reported he could not go. He then returned to the stone marked EO, and ran south 2.30 chs. trail to Picuris, 18.18 chs. Rio Pueblo, 34.50 chs. to foot of high mountain, over which he reported he could not go; and at this point set a stone marked W. B. M. G. in mound of stones for point on west boundary of Mora grant. These two monuments on either side of the Pueblo River are now found in place. It is said by appellant's counsel that the stones were moved after they were set by Means, or if not, they were placed by Means without regard to the other boundaries of the grant. This contention must be rejected, as it was by the trial court; for there is no evidence to support it, but on the contrary they were found there by Surveyor Walker in 1902, who was employed by appellant to survey some townships that closed upon the western boundary of the grant; they were seen there, especially the one marked EO, as early as 1866, by residents of that locality, who further testified that they had seen them there from time to time since, and for the further convincing reason that there is no other place at the Estillero along and across the Pueblo
162 River where they could be put so as to be in accord with the course and distance given by Means for their locations relative to that river and to each other. There was also evidence that the third stone north of the EO stone was found, but in broken pieces. Walker being convinced that the stones which he found at the Estillero were set by Means as monuments to mark the west boundary of the grant, were in place and were calls in the patent, ran a north and south line through them and marked it. His line extended from a point eleven or twelve miles north of the Estillero, through the monument calls at that place and on south to the Sapello River, intersecting that stream about five miles west of the northwest corner of the Las Vegas grant. He described the country through which his line passed as "something fierce, very mountainous." Walker's survey was not approved. He was a witness at the trial.

Taking up the patent description at the mound of earth, Means' monument on the north line, it runs thus:

thence from said large mound west ten miles, forty chains, fifty-r links to point for northwest corner of the Mora grant inacces-e in the mountain and not set, which point is ninety miles, thirty-chains, twenty-eight links from the beginning at the southeast ner. Thence south from said point for northwest corner. At rteen miles, seven chains, forty-one links on course * * * a ne thirty by nineteen by seven inches in size in large mound of nes and marked W. B. M. G., and on the west side EO. (Ties that stone to natural objects made by Means are then given.) thirteen miles, nine chains, seventy-one links a trail to Picuris ring northwest. At thirteen miles, twenty-five chains, fifty-nine ks the Pueblo River bearing northwest and southeast. At thir-n miles, forty-one chains, ninety-one links, at foot of high untain, a stone eighteen by twelve by five inches in size in a und of stones and marked W. B. M. G. At thirty-three miles, rty-three chains, twenty-nine links on course * * * south-st corner of the Mora grant, a stone twenty by fourteen by six hes in size in a mound of stones and marked S. W. C. M. G. and nding on the edge of a high mountain on left bank of the Sapeyo River, one hundred and fifty-two links north of the stream."

The plat referred to in the patent shows an east and west line from the mound of earth to the northwest corner and a rth and south line from the northwest to the southwest corner rough the stone monuments at the Estillero. The two stones with ir markings, called for in Means' field notes, are noted on the west e of the plat, also the mound of earth on the north line. It now rns out that there were errors in Means' traverse, so that the cal-ations that were made for the northwest and southwest corners t both of them east of a north and south line through the Estillero, e calculation as to the projected north boundary being about 2¼ les short, and as to the south boundary about 3½ miles short. The d in controversy lies east of this north and south line.

In 1909 Alonzo E. Compton undertook to run out the west bound-y of the grant for appellant. What he did appears to have been compliance with instructions. For the southwest corner of the ora grant he selected a stone 20 x 14 x 6 inches 75 links north of e water's edge of the Sapello River, which was 199 chains 55 links st and 73 chains 16 links north of the northwest corner of the s Vegas Grant as reestablished in 1899 by Surveyor Johnson. He de no claim that this stone was the one called for in Means' field tes as the southwest corner of the Mora Grant. It does not agree th that stone in size. He did not testify that it was marked at , neither did it agree with the courses and distances given by ans. No one testified that Means put it there, nor were there any cumstances that would lead to that conclusion. From that stone ran slightly east of north to the north boundary. Appellant con-ds that this line is the west boundary. It ran east of the monu-

ments at the Estillero about three miles, it did not cross the Pueblo River, and intersected the north boundary at a point 9 miles 66 links west of where Compton said the large mound of earth erected by Means on the north boundary stood. The land in controversy lies west of this line, and appellant's claim rests wholly on the contention that this is the true west boundary of the grant. In our opinion the contention is without support. We are further of the opinion that the north and south line through Means' monu-
164 ments at the Estillero is the true boundary. Because, first, the southwest corner being lost, the artificial monuments at the Estillero control. The southwest corner of the grant is a point on the west boundary. The artificial monument which is supposed to have marked it being lost, its location can not be reestablished by courses and distances which put it at a place in conflict with a course from known monuments in the same boundary. Monuments prevail over courses and distances, and between the latter courses prevail. Newsom v. Pryor's lessee, 7 Wheat 7; Silver King Co. v. Conklin Co., 255 U. S. 151; U. S. v. Redondo Development Co., 254 Fed. 656; Ewart v. Squire, 239 Fed. 34; Watkins v. King, 118 Fed. 524; 9 C. J. 217, 218, 226. Because, secondly, the plat referred to in the patent shows the west boundary to be a north and south line through the monuments at the Estillero, and places the southwest corner at the intersection of that line with the Sapello River. The plat, for present purposes, is embodied in the patent by reference, and is itself taken as a monument. Jefferies v. Land Co., 134 U. S. 178, 194; Chapman & Dewey v. St. Francis, 232 U. S. 186, 197; Wilson v. Chicago L. & T. Co., 143 Fed. 705. Moreover, we think this conclusion is in accord with and carries out the intent of the parties as it is exhibited by patent, by plat and by field notes of the patent survey.

Counsel for appellant insist that great weight should be given to the fact that Government surveys made in 1882 show the east boundary of several townships abutting on the Compton line, citing in support Kirwin v. Murphy, 189 U. S. 35, and other cases, wherein it is held that the right and power to make and correct surveys of public lands is lodged in the political or executive branch and can not be interfered with by the judicial. The principle is undoubtedly sound and firmly established, but here the patent for the Mora grant had been issued many years before the surveys of those townships were made, the lands which it conveyed had been segregated from the public domain, the rights of the patentees and their assigns to those lands had become vested in them and could not be taken away, diminished, or interfered with arbitrarily and without an opportunity given to those interested in the grant to be first
165 heard. The rule invoked has no application here. In Kean v. Calumet Co., 190 U. S. 452, it is said: "The resurvey by the United States in 1874 does not affect the Calument Company's rights. As the United States already had conveyed the lands, it had no jurisdiction to intermeddle with them in the form of a second sur-

ey." The same principle is repeated in Lane v. Darlington, 249 U. S. 331. We agree with the district judge that the ex parte survey of 1882 was an immaterial fact.

Affirmed.

Filed November 9, 1922.

166 United States Circuit Court of Appeals, Eighth Circuit.

September term, 1922, Saturday, November 11, 1922.

[Title omitted.]

Decree.

Appeal from the District Court of the United States for the District of New Mexico.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of New Mexico and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

November 11, 1922.

167 In U. S. Circuit Court of Appeals.

Petition for and order allowing appeal.

(Filed Dec. 18, 1922.)

The above-named plaintiff, the United States, conceiving itself aggrieved by the decree entered herein on or about November 9, 1922, doth hereby appeal from said decree to the Supreme Court of the United States, and prays that this appeal may be allowed for the reasons specifically set forth in the assignment of errors filed herewith, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

S. W. Williams,
Solicitor for Plaintiff and Appellant,
The United States of America.

St. Louis, Dec. 18, 1922.

And now, to wit, on Dec. 18, 1922, it is ordered that the appeal be allowed as prayed for.

Wm. S. Kenyon,
Circuit Judge.

[File endorsement omitted.]

In U. S. Circuit Court of Appeals.

Assignment of errors.

(Filed Dec. 18, 1922.)

Now comes the United States, plaintiff and appellant herein, and respectfully alleges that the following errors occurred in the proceedings and final decree in the above-entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit:

1. The court erred in affirming the decree of the District Court.

168 2. The court erred in holding the west boundary of the Mora grant to be along a line through the so-called EO stones, as found by Deputy Surveyor John H. Walker in the year 1902.

3. The court erred in not holding that the plat attached to a patent shows the west boundary of the grant to be approximately one mile west of the east boundary of range 14 east of the New Mexico principal meridian and that this showing in conclusive.

4. The court erred in refusing to admit in evidence the surveys made in 1882 showing the closings of the public land surveys on the west boundary of the grant.

5. The court erred in refusing to admit in evidence the decisions of the Commissioner of the General Land Office and the Secretary of the Interior dated October 28 and November 6, 1907, respectively, holding that the west boundary of the Mora grant was along the line as found by the survey of 1882.

6. The court erred in holding that the appellees are the owners of the land in controversy.

Wherefore, plaintiff and appellant prays that said decree of the United States Circuit Court of Appeals be reversed, set aside, and held for naught, and that the proper judgment and decree be rendered and entered herein for this plaintiff and appellant.

S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitor for Appellant.

[File endorsement omitted.]

169 In U. S. Circuit Court of Appeals.

Affidavit as to value of land in controversy.

Filed Dec. 18, 1922.

John McPhaul, being duly sworn, deposes and says:

1. That he is over the age of twenty-one years.

2. That from the record in the above-entitled case it appears that there is involved in said suit the title to a tract of land approximately thirty miles long and three and one-half miles wide, situated in the

State of New Mexico, immediately west of a line surveyed by Alonzo E. Compton, deputy United States surveyor, in August and September, 1909, and approved by the surveyor general of New Mexico in 1911; that said strip embraces approximately 57,586.46 acres; and that such land is now being administered as a part of the Sante Fe National Forest.

3. Deponent further states that he has been over, across, and upon said strip of land, and knows that a considerable portion thereof is covered with a heavy growth of commercial timber, and that otherwise the land is valuable for grazing.

4. Deponent further states that from personal knowledge of a portion of the land examined by him, the land in dispute is worth more than one thousand dollars ($1,000) lawful money of the United States.

5. Deponent further states, from his personal knowledge of a portion of said land and from information and belief as to the remaining areas, that the land involved in said suit is reasonably worth five hundred thousand dollars ($500,000) lawful money of the United States.

JOHN MCPHAUL.

Subscribed and sworn to before me this eleventh day of December, 1922.

[SEAL.] CHARLES B. STRONG,
Notary Public in and for the District of Columbia.

170 My commission expires February 2, 1925.

[File endorsement omitted.]

171 In the United States Circuit Court of Appeals for the Eighth Circuit.

[Title omitted.]

Citation and service.

Filed Dec. 29, 1922.

UNITED STATES OF AMERICA,

To State Investment Company and Edward B. Wheeler:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, in the District of Columbia, sixty days after date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant in said above-mentioned cause should not be corrected, and why speedy justice should not be done all parties on that behalf.

Witness the Hon. William Howard Taft, Chief Justice of the United States, this 18th day of December, in the year of our Lord one thousand nine hundred and twenty-two.

WM. S. KENYON,
Circuit Judge.

Copy of the foregoing citation received this 23rd day of December, 1922.

L. B. DAVIS, Jr., & A. T. ROGERS, Jr.,
Solicitors for State Investment Company and Edward B. Wheeler.

[File endorsement omitted.]

172 United States Circuit Court of Appeals, Eighth Circuit.

Clerk's certificate.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of New Mexico as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the United States of America was appellant and the State Investment Company et al. were appellees, No. 6088, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation, with acknowledgment of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this second day of January, A. D. 1923.

[SEAL.] E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed on cover:) File No. 29338. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 195. The United States of America, Appellant, *vs.* State Investment Company and Edward B. Wheeler. Filed January 8th, 1923. File No. 29338.

○

FILED
SEP 21 1923
WM. R. STANSBURY

No. 195.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA, APPELLANT,

v.

STATE INVESTMENT COMPANY AND EDWARD B. WHEELER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA, appellant, v. STATE INVESTMENT COMPANY AND Edward B. Wheeler. | No. 195.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a suit by the United States to quiet its title to a tract of land about 3½ miles wide and some 30 miles in length, lying on the west boundary of the Mora Grant in the State of New Mexico. It may be said in passing that the Government has been in possession of the land ever since the acquisition of the Territory of New Mexico in 1848, and since 1898 it has been administered as a part of its national forest (30 Stat. 1773). (R. 5.)

The defendants contend that the land in controversy is a part of the area surveyed and patented as the Mora Grant, and as they are admittedly the

owners of that grant they claim to be owners of the tract in dispute.

The Mora Grant was a community valley grant made by the Mexican authorities September 28, 1835, to seventy-six individuals, and it appears from the act of juridical possession, which is fully set forth in the patent—a proceeding akin to the common-law livery of seizin—that the constitutional justice, who conferred possession, proceeded to the place called De Mora for the purpose of distributing the public land, and that the settlers were also present. This proceeding involved the establishment of boundaries of the tract when there was any uncertainty respecting them. If these were designated in the grant, it required their ascertainment and identification; if they were not thus designated, it required the measurement of the quantity granted and its segregation from the public domain. *Van Reynegan* v. *Bolton*, 95 U. S. 33. The following is quoted from the act of juridical possession:

> The lower valley was called Valle de Santa Gertrudes and the upper one Valle de San Antonio . . . The town site was marked out in both valleys, the one at Santa Gertrudes being two hundred varas from north to south and one hundred and fifty varas from east to west, leaving thirty varas outside for drippage and a common road and the meadow for the benefit of all, with its entrances and exits free. The site of the town of San Antonio contains two thousand varas from north to south and one hundred and fifty varas from east to west,

> leaving the meadow for the benefit of all settlers.

The constitutional justice then states that he—

> proceeded to distribute the land suitable to cultivation, and drawing the line from east to west on the south side of the valley of the Santa Gertrudes there were measured four thousand one hundred varas of land, and on the north in the direction of Tulquillo there were measured one thousand seven hundred varas of land which were distributed among the settlers in the order in which they are arranged on the list.

On the day following at the Valle de San Antonio the line was drawn—

> from the edge of the Cienega toward the west, another was measured and distributed according to the list aforementioned; two thousand eight hundred varas of land in the valley; five hundred and sixty varas at the Lagunita; and two hundred and fifty varas of land opposite the town towards the southwest thereof. . . . the general boundaries of this tract being for the benefit of the grantees and for common pasturage; on the north the Ocate River; on the south to where the Sapeyo empties; on the east the Aguage de la Yegua; and on the west the Estillero. (R. 114.)

Then follows a list of seventy-six names of the settlers to whom grants were made, the quantity granted to each settler varying from fifty to three hundred varas. (R. 115–117.) A vara is approximately thirty-three inches, a square vara being

eighty-four one hundredths of a square yard. The town of San Antonio is shown by the evidence to be the present town of Cleveland, and the plaintiff's evidence also shows that it is the same place that Surveyor Means called Upper Mora. The lands were apparently all measured in two days—those at Santa Gertrudes in one day and those at San Antonio the day following.

Pursuant to the provisions of the Act of July 22, 1854, 10 Stat. 308, the grant was submitted to the Surveyor General of the Territory of New Mexico, who recommended its confirmation (R. 118–121), and it was in fact confirmed by the Act of June 21, 1860, 12 Stat. 71. In his report on the case the surveyor general stated that it had been established that the lands embraced in the metes and bounds set forth in the act of possession had been severed from the public domain. (R. 121.) This evidently referred to the lands which had been measured off for the different settlers and the town sites, because the general metes and bounds mentioned in the act of juridical possession were too vague and indefinite to identify any particular lands, and it was necessary that the lands be identified. *Van Reynegan* v. *Bolton, supra.*

Following the confirmation of the grant by Congress, a contract was made with Thomas Means, United States deputy surveyor, for the survey of the grant, and in execution of that contract Means surveyed in satisfaction of this small community grant, the lands of which were measured and dis-

tributed in two days, a tract of land about 35 by 40 miles in extent, containing in *excess of eight hundred thousand acres*, an area larger than the entire State of Rhode Island and more than one-half as large as Delaware. (Plaintiff's Ex. 2, R. 139.)

The United States issued a patent for the grant August 15, 1876, according to the Means survey, a copy of the plat returned by him and his field notes being incorporated in the patent and made a part thereof. (R. 113 to 138.)

The area conveyed by the patent includes all the land embraced in the plat according to the courses and distances given in Means' field notes, but the defendants contend that Means' courses and distances do not agree with the monuments set by him on the west boundary, and they aver that as these monuments are located with reference to a fixed natural feature—the Pueblo River—the courses and distances must yield to the natural object which is some three and a half miles further west than the field notes show the west boundary to be; consequently, they claim that the west boundary of the grant consists of a north and south line through the place where they allege the monuments were fixed by Surveyor Means when he made the survey in 1861 (R. 9); this, notwithstanding that it would leave a gap of some three and a half miles in both the north and south boundaries and would make the west boundary unnecessarily long.

We are not able to state what Means actually did in making this survey, because none of the surveyors,

either those testifying for the Government or those who testified for the defense, was able to follow him. We can only point out what he said he did. The east boundary of the grant is described as the Agua de la Yegua—which means the Spring of the Mares—and commencing at a spring on the extreme southeast corner of the grant (R. 75) Means ran a line due north some forty-three miles where he is said to have intersected the Ocate River. (R. 85.) From this point he meandered the river in a generally westerly and northwesterly direction until he reached a point where he reports the river as lost in the mountains. (R. 91.) From this latter point he ran thirteen courses where he set a corner marked as meander corner 13 south of Black Lake, some eighty miles from the beginning, and from which he reported the northwest corner to be west a distance of ten miles, 40 chains, 54 links—inaccessible in the mountains. (R. 93.)

From meander corner 13, Means reports he ran a traverse line along the base of the range of mountains forming the west boundary of the grant (R. 94) and in so doing reached the Plaza in Upper Mora, from which place he says the Estillero was pointed out to him, and to which he adds that he ran a line from the Plaza in Upper Mora, the distance reported being 592.30 chains, on a course north forty-two degrees west. (R. 97.)

He then returned to Upper Mora and continued his traverse south and southwest reaching the northwest corner of the Las Vegas Grant on the banks of

the Sapello River. This corner had been established the year before by the survey of Pelham and Clements. From this northwest corner of the Las Vegas Grant Means reported the southwest corner of the Mora Grant to be 2 miles, 3.10 chains west, and 27.39 chains north (R. 99), and that a north and south line through the Estillero would intersect the Sapello River 2 miles, 3.10 chains west of the northwest corner of the Las Vegas Grant.

Means' survey was made in July and August, 1861, and his field notes show that he did not set any monuments at that time on the west boundary but that he returned there in November of that year and then set two stones at the place called the Estillero (R. 107), one of which was marked with the letters W. B. M. G. on the east side and EO on the west side, which will be hereafter referred to as the EO stone. These stones were reported as being near the Pueblo River and they were set 34 chains, 50 links, apart. (R. 108.) According to his field notes it was impracticable to survey any farther on the west boundary, either north or south of the two stones. It should be observed here that in the west boundary of this grant, a line more than thirty miles in length, the only portion of it which was actually run on the ground was this small piece, a little over 34 chains long between the stones alleged to have been set at the Estillero. It will also be observed that Means did not get within ten miles of the place fixed by him as the northwest corner of the grant. This clearly appears

from the field notes of his survey which were introduced in evidence. (R. 93.)

In 1882, more than forty years ago, the Government had surveys made of two townships adjoining the Mora Grant on the west (R. 3), and those public-land surveys were reported as closing upon the Mora Grant at the southwest corner, a distance of a little more than two miles west of the northwest corner of the Las Vegas Grant. (R. 4.) The District Court refused to allow these surveys to be introduced in evidence (R. 17), but permitted plaintiffs' witness Compton to testify that in retracing the lines of the public-land surveys he found the closing corners on the west boundary of the Mora Grant. These surveys would place the west boundary of the Mora Grant a little farther west from the northwest corner of the Las Vegas Grant than the distance reported by Means. (R. 16.)

Thus the matter rested until the year 1902, when John H. Walker, a deputy United States surveyor, was sent to survey some other townships on the west boundary of the Mora Grant, and he reported that he found the monuments set up by Means at the Estillero a distance of some three miles west of the line called for by Means' field notes, and Walker surveyed a line through those stones from the Sapello River on the south as far north as the boundary of the Rio Grande Grant. (R. 34–36.) Walker, however, did not connect this line with either the north or the south boundary of the grant. Some time thereafter, though just when is not dis-

closed by the record, the grant claimants set up a claim to this strip of land, lying between the line of the public-land survey and the Walker line, some three miles in width, extending along the entire west boundary of the grant, and embracing an area of approximately 60,000 acres.

It should be stated here that the Interior Department never approved Walker's survey as the west boundary of the Mora Grant (R. 49), but later, in 1909, sent deputy surveyor Alonzo E. Compton to retrace the east boundaries of the fractional townships that had been surveyed in 1882 and which had then been closed on the west boundary of the grant. This was done by Compton, who surveyed the entire west boundary from the southwest corner to the line on the north, and, as stated above, he testified that he found where the public-land survey had been closed on the Mora Grant at approximately the proper distance from the northwest corner of the Las Vegas Grant (R. 16). The north boundary of the Las Vegas Grant is the same as the south boundary of the Mora as far west as the northwest corner of the former. The northwest corner of the Las Vegas had been recently established by Surveyor Johnson when he resurveyed the north boundary of that grant; and that corner was found and identified by Compton.

The defendants were unable to show that the place of the stones found by Walker was witnessed by the trees described by Means in his field notes. They were unable to find either tree marked as a

witness to the EO stone; but they did show that the two stones were found at the distance from the Pueblo River called for by Means' survey; and they also claim (which, however, we can not concede) that certain other natural features were found to agree with Means' calls, but both surveyors who testified for the defendants—John H. Walker and Vincent K. Jones—admitted on cross-examination that the line run by Walker was a considerable distance west of the line called for by Means' field notes (R. 36, 42); that neither of the stones found by Walker is situated at the base or foot of a mountain; that each stone is up on the side of a mountain quite a distance from the base; and that the land directly north of the EO stone and south of the south stone could be surveyed without difficulty.

The plaintiff introduced in evidence a map showing Means' survey of the grant, and showing also the Compton resurvey, and the location of the Walker line to the west. This map is in the record, marked Plaintiff's Exhibit No. 25. It clearly presents the situation.

The Government showed that the area obtained included substantially the area called for by Means' plat and survey, notwithstanding which the District Court held (R. 58) that the western boundary of the grant was the line run by Walker through the two stones found by him some three and a half miles west of the line upon which the public land surveys were closed in 1882, which was the line retraced by Comp-

ton in 1909, thus adding about 60,000 acres to the patented area. From a decree in accordance with that opinion the Government sued out an appeal to the Circuit Court of Appeals, where the action of the District Court was affirmed (285 Fed. 128). The further appeal of the Government brings the case before this court.

ASSIGNMENT OF ERRORS.

1. The court erred in holding the west boundary of the Mora Grant to be along a line through the so-called EO stones, as found by Deputy Surveyor John H. Walker in the year 1902.

2. The court erred in not holding that the plat attached to the patent shows the west boundary of the grant to be approximately one mile west of the east boundary of range 14 east of the New Mexico principal meridian and that this showing is conclusive.

3. The court erred in refusing to admit in evidence the surveys made in 1882, showing the closings of the public land surveys on the west boundary of the grant.

4. The court erred in refusing to admit in evidence the decisions of the Commissioner of the General Land Office and the Secretary of the Interior, dated October 28 and November 6, 1907, respectively, holding that the west boundary of the Mora Grant was along the line as found by the survey of 1882.

STATEMENT OF THE ARGUMENT.

(1) The court erred in refusing to admit in evidence the plats and field notes showing the closings of the public land surveys on the west boundary of the grant and also in refusing to admit the decisions of the Land Department holding that the west boundary of the grant was along the line run by Surveyor Compton.

(2) The Walker line must be rejected because it was not accepted or approved by the Land Department and because the stones found by Walker do not answer either the calls of the patent or the calls of the grant.

(3) Means' survey was so erroneous as to be fraudulent; indeed, it was no survey at all, and is not binding upon the Government. It follows, therefore, that if the court is not satisfied with the Compton survey it should order a new survey by the Land Department.

ARGUMENT.

I.

The court erred in refusing to admit in evidence the plats and field notes showing the closing of the public-land surveys on the west boundary of the grant and also in refusing to admit the decisions of the land department, holding that the west boundary of the grant was along the line run by Surveyor Compton.

The question as to where on the surface of the earth a surveyor ran a line is plainly a question of fact, and when it involves the survey of public lands

it is such a question as must necessarily be primarily decided by the Interior Department. The Mora Grant was carved out of the public domain, and it was the duty of the Secretary of the Interior to extend the public-land surveys over such lands as were not embraced in the grant; it was also the duty of the Secretary to determine what lands were public lands. *Kirwan* v. *Murphy*, 189 U. S. 35. In the performance of this duty he let a contract in 1882 for the survey of the public lands adjacent to the grant on the west. This the Secretary undoubtedly had the right to do. *Lane* v. *Darlington*, 249 U. S. 331. The deputy surveyors employed to do the work reported that they had closed on the Mora Grant. The return of these surveyors showing where they had found the survey of the Mora Grant was clearly admissible, but the District Court refused to admit it. However, the court did permit Surveyor Compton, who retraced the line in 1909, to testify as to where he found the closing corners, namely, a little more than two miles west of the northwest corner of the Las Vegas Grant.

From the time of the public-land surveys in 1882 until 1902, twenty years later, when John P. Walker reported the finding of the stones several miles west of the line, the line run in 1882 was not questioned as the west boundary of the grant. The plaintiff offered to prove that the Government had disposed of lands lying along this line as public lands of the United States and that later when the location of the line was in issue the Interior Department had adhered

to the Compton line as the west boundary of the grant, but the court refused to admit such offer.

We submit that the action of the court in this regard was clearly erroneous, because, as stated, it was the duty of the Secretary of the Interior to survey the public lands adjoining the grant. While the Secretary may have had no authority to change the line that had been run by Means, still it was his duty to find where that line had been run on the ground, and that is what was done in 1882 and 1909. To say that the Government may not show where the Secretary found the line to be is tantamount to saying that the correctness of his work can not be inquired into.

The power to make and correct surveys of public lands belongs to the political department of the Government and not to the judicial. *Cragin* v. *Powell*, 128 U. S. 691; *Kirwan* v. *Murphy*, 189 U. S. 35. Therefore, the survey of 1882 was admissible on the trial of this cause in 1918 as an archive of the General Land Office, if upon no other ground. *Ayers* v. *Watson*, 137 U. S. 584.

It is stipulated that the Walker survey was not approved by the Interior Department. His location of the Means line was never adopted by the Department, but the latter accepted the Compton survey as the west boundary of the grant. The plaintiff was clearly entitled to show what the Secretary of the Interior had decided on this question, but when the offer was made the court refused to admit it. We confess a difficulty in understanding

this action of the court, as it appears to have been palpably erroneous. It was the duty of the Secretary of the Interior to find where the lands of the grant owners ended and those of the government began, and if his decision thereon is not admissible we are unable to understand how the correctness of his finding can ever be determined.

While Means did not actually run the west boundary of the grant on the ground, it was entirely possible to close the public land surveys on this line, because he had tied his survey to the northwest corner of the Las Vegas Grant, which had been fixed and which was only a little more than two miles east of his southwest corner of the Mora Grant.

II.

The Walker line must be rejected because it was not accepted or approved by the land department and because the stones found by Walker do not answer either the calls of the patent or the calls of the grant.

The Estillero is given as one of the boundaries of the grant. Indeed, it is the only point mentioned on the west boundary; it is also referred to in the patent, and it becomes important, therefore, to define and locate it. So far as we have been able to ascertain, the word seems to have no footing in either the Spanish or English language. This would lead to the inference that it is possibly a proper name, and this finds support in the reference made to it in an act passed by the legislature of the Territory of New Mexico on January 30, 1868, defining

that Means refers to as constituting the west boundary of the grant. But there is one point not to be overlooked. It was pointed out to Means from the plaza in Upper Mora, and therefore it could be seen from the valley.

The place where the stones were found by Walker does not answer to this description because it is too far west, being entirely across the high divide which lies west of the range of mountains constituting the west boundary. That place could not be seen from Cleveland or from any other place in the valley, as it is a considerable distance down the west slope of the main divide. (R. 25, 42.) Moreover, the Estillero, being given as one of the bounds of the grant, the survey of the latter should extend only up to it and should not include it. Even by the testimony of defendants' witnesses the Estillero extended on the south and east to the Alamitos, which is the point where the water of the Pueblo River is brought east to the Mora. This point is several miles east of the place of the Walker stones. The Walker line runs through the extreme western edge of the valley in which the stones were found. The stones are as far west as they could be and still be in the valley. (R. 37.) Hence, even if the Estillero is where the defendants' witnesses claim it to be, the Walker line is entirely too far west, because it runs through the west side of it. According to Walker's own testimony, his line runs through the extreme western edge of the valley.

Where an object of extent is named as a boundary, the side of the object nearest to the bounded tract is to be taken. *Ramon Vigil Grant*, 1 L. D. 288. "The land conveyed extends *to* the flats but not *over* them; and the flats being a bound of the land conveyed are not a part of it." *Storer* v. *Freeman*, 6 Mass. 435, 439. See also *United States* v. *McLaughlin*, 127 U. S. 428.

True, the Walker stones were marked as indicated by Means, and they were found at the proper distance from the Pueblo River, but these are the only particulars in which they conform to calls of Means's survey. A. E. Compton, a witness for plaintiff, testified that there were a number of places where the stones could have been placed in the valley at the proper distance from the river. (R. 27.) But the stones reported by Means agree only roughly in size with those found by Walker. Indeed, the south stone is described by Means as being 18 x 12 x 5 inches (R. 108), while the Walker stone is said to be 15 x 15 x 2½ inches (R. 24).

Means reported that each of the stones was set at the foot of a high mountain over which he could not go; while the Walker stones are 7 or 8 chains up the slope of the mountains, and the slope is no greater above the stones than it is at the place where they were found. Hence there was no reason for Means to set the stones where it is said that Walker found them. (R. 24, 37, 51.)

No witness trees could be found to the Walker EO stone, nor was their absence accounted for. (R. 37.)

Means reported two witness trees to his EO stone-
pine and an aspen—but neither could be found
the Walker stone. (R. 24.)

No witness trees are given by Means to his sou
stone, while the Walker south stone is near the ed
of the timber; and if Means had set a stone there
was his duty to mark trees and refer to them in
field notes.

The distance given by Means to the EO sto
from the trail to Picuris is 2.30 chains, while t
Walker stone is nearly 8 chains from the trail. (
51, 108.)

The line north 42° west which Means reports
ran from the plaza in Upper Mora was over botto
land for a distance of some 32 chains before t
place of the EO stone was reached; while if o
were to start back from the EO stone he wou
immediately encounter high and precipitous mou
tains.

The EO stone of Means was set in a place visib
from Upper Mora in the valley. While the place
the Walker stone can not be seen from any point
the valley, on the line north 42° west they are
miles west from the divide. (R. 25, 27, 42.)

The EO stone of Means was set 20 miles 25.8
chains north of the Sapello River, while the Walk
stone was found only 18 miles 76 chains north of t
river, there being a difference of 1½ miles betwee
the two.

The EO stone of Means was set 38½ miles west
the eastern boundary of the grant, while the Walk

stone was found 42 miles west of the eastern boundary.

The Walker stones, therefore, do not answer either the calls of the grant or the calls of the patent. If Means actually set the stones where Walker is said to have found them, he left a gap of some two or three miles in both the north and south boundaries of the grant; that is to say, his north and south boundaries would lack two or three miles of reaching his west boundary, while his west boundary would be several miles too long. Plaintiff's witnesses Compton and Kirkpatrick, both veterans in the service of the public land surveys, testified that in their opinion the Walker stones were not logically connected with the Means survey. Kirkpatrick went so far as to say that he did not believe Means set the stones. (R. 25, 53.)

The Walker line is not connected with either the north or south boundary of the grant, and if followed up on the north would conflict with the Rio Grande Grant, as is clearly shown by Government Exhibit 25.

III.

Means's survey was so erroneous as to be fraudulent; indeed, it was no survey at all and is not binding upon the Government. It follows therefore, that if the court is not satisfied with the Compton survey it should order a new survey by the Land Department.

In the 123 miles of the east, north, and west boundaries of this grant, the only corners that now can be found of the Means survey are the two stones

said to have been set by him at the Estillero. Th
important 13th meander corner south of Black Lak
could not be found though diligent search wa
made for it by Kirkpatrick and Compton. (R. 17
29, 30.) His alleged traverse from Black Lake by
way of Guadalupita to Upper Mora and thence t
the Estillero could not be followed by any of the
surveyors. (R. 18, 30.) All the witnesses testified
uniformly that they did not believe the line north
42° west was ever run from Upper Mora to the place
of the stones. Means could not have possibly run
that line the same day that he ran the traverse from
Guadalupita to Upper Mora as he reports that he
did. He therefore did not make a complete survey
of the grant. According to his own field notes he
lacked some ten miles of completing the survey of
the north boundary, and he expressly states that
he survyed only 34½ chains on the west boundary,
while the testimony of the witnesses is to the effect
that he did not survey the line to the place where
Walker is said to have found the stones. (R. 41,
44, 25, 28.)

It is impossible to follow his traverse and reach
the place of the stones. Surveyor Jones, defendants'
witness, testified that he did not attempt to trace
Means's line north 42° west from Upper Mora, as
that would be wasted effort. He testified further
that it was idle pastime to tie to the nearest corner of
the grant as so many errors existed in that line. If
Means did set the stones there he set them at random,
and they are not binding on the Government. A

north and south line through his northwest corner will not reach the stones by some two or three miles, and the same thing would be true of the north and south line through his southwest corner.

Assuming, therefore, that Means set the stones where Walker is said to have found them, his survey must be rejected as fraudulent, because he did not survey the traverse line by which he is supposed to have reached the place of the stones.

Means's survey is also erroneous in reporting the course of the Ocate River. He gives several courses of the river as west of south. That is to say, in meandering up the stream he reports his course to be north of east, while the testimony of both Kirkpatrick and Compton is to the effect that nowhere is the course of the river west of south. This might account for Means placing Black Lake north and east of its true location on the ground.

The evidence as a whole inevitably leads to the conclusion that at best Means's location of the west boundary is no more than a guess, and in this situation the stones found by Walker can not be taken as controlling, because it is by no means certain that Means set them where Walker is said to have found them. And even if he did place them there, he set them at random and did not know where he was when he did so. Monuments set in such a manner are not controlling of courses and distances because there is no certainty respecting them.

In *United States* v. *Redondo Development Co.*, 254 Fed. 656, where the work of the surveyor was dis-

credited, as it is here, the Circuit Court of Appeals for the eighth circuit disregarded the monuments and ordered a new survey by the Land Department in accordance with the plat and field notes. In that case there was a deficit of some 10,000 acres in the survey. In this case there was a surplus of approximately 60,000 acres over the quantity shown by the plat and field notes. Just as in that case, the plat and field notes showed the proper area of the claim, so do the plat and field notes here show the area conveyed by the patent; but as in that case the surveyor practiced a gross fraud in marking the boundaries on the ground, so in this case Means practiced a greater fraud upon the Government in locating the west boundary, assuming that he set the stones where Walker is said to have found them. In the case of the *Redondo Development Company* the Circuit Court of Appeals refused to recognize the monuments, and ordered a new survey to agree with the plat and field notes, and that is what should be done in this case provided the court is not satisfied with the Compton survey, which, as connected with Johnson's survey of the south boundary, is the only complete survey that was ever made of the grant.

The Court of Appeals seems to have attached some importance to the fact that the plat of Means's survey showed the west boundary to be through the Estillero, but that proves nothing. It does not show where the Estillero is upon the ground. Neither does it show that the stones are 3½ miles

west of any line called for by his field notes. On the contrary, it indicates that the stones are located on the north and south line which runs through his northwest and southwest corners, and we know that the Walker stones are far west of that line.

In this connection it may be said that the same plat that shows the west boundary of the grant to be through the stones of the Estillero, also shows the west boundary to be only a mile west of the east boundary of range 14 east. Neither is more conclusive than the other, because the maker of the plat did not know where the Estillero was on the ground, nor did he know where the east boundary of range 14 was. The point we wish to make is that if the plat is to be taken as conclusive it definitely fixes the Compton line as the west boundary of the grant.

It should not be overlooked that the line run by the deputy surveyors in 1882 has been regarded as the west boundary of the grant from the time it was run until the question was agitated by the grant claimants about the year 1907, a period of some 25 years. During all that time the land here involved was regarded as public land of the United States and administered accordingly. When the question was raised by the grant claimants about the year 1907, the Interior Department adhered to this line and refused to change it.

It was held by the Circuit Court of Appeals for the Eighth Circuit in *Iowa* v. *Carr*, 191 Fed. 257,

that possession was *prima facie* evidence of title t real estate, and—

> Where the lands of respective owners adjoin and for many years one, with the silen acquiescence of the other, has had possessio and occupation to a certain line between them claiming title, these facts constitute strong evidence of the correctness of the line, and that line should be taken as the correct line in the absence of persuasive countervailing evidence. (Syllabus.)

See also *United States* v. *Stone*, 2 Wall. 525, 537.

So, in *Virginia* v. *Tennessee*, 148 U. S. 503, it was held that a boundary between states, as well as between private parties (p. 522)—

> which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant.

The grant claimants have no equities to be considered. They have never been in possession of the land in controversy; and for 25 years after the public-land surveys were closed upon the west boundary in 1882 they set up no claim to it. They have received an area *enormously larger* than that granted by the Mexican authorities, and have no cause to complain. The boundary was fixed by the public-land survey of 1882 and should not be disturbed.

CONCLUSION.

It is respectfully submitted that the decisions of the lower courts should be reversed. If, however, the court is not satisfied with the Compton line, a new survey by the Land Department should be ordered.

JAMES M. BECK,
Solicitor General.

S. W. WILLIAMS,
Special Assistant to the Attorney General.

SEPTEMBER, 1923.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 195

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

STATE INVESTMENT COMPANY AND EDWARD B. WHEELER, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLEES.

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STATE INVESTMENT COMPANY AND EDWARD B. WHEELER, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLEES.

Introduction.

This suit was commenced by the appellant to quiet its claimed title to a strip of land in New Mexico. The appellant asserts that the strip in dispute lies to the west of the west boundary of the Mora Grant, a much larger area which

was patented by the United States—the present appella
on August 15, 1876, to the predecessors in title of
appellees herein. The appellees, on the other hand, a
that the disputed strip lies to the east of that west boun
and, therefore, is within that grant as the same was pate
Neither the issues made by the pleadings nor any o
issues litigated below raise or involve the validity o
United States patent or question its conclusiveness ag
the Government. Whether the strip lies to the east
the west of the west boundary of the Mora Grant raise
one question of fact in this suit, which is, Where upo
earth's surface is the west boundary of that grant?
question emerges from a conflict between the calls o
patent for natural objects and monuments, on the
hand, and for distances, on the other. Appellant doe
question either the general rule that natural objects
monuments control distances, nor the ruling of the
court in so holding in this case; nevertheless the app
claims that the true west boundary of the grant is a lin
by Deputy United States Surveyor Compton in 1909, w
admittedly does not respond to a single patent call for na
objects, monuments, courses, or distances. The app
on the other hand, claim that the true west boundary
grant is a line run by Deputy United States Surveyor W
in 1902, which responds perfectly to the patent call
natural objects, monuments, and courses.

The salient features of the claims of the parties a
the situation developed by the evidence are graphi
shown in the sketch map which appears as the frontis
to this brief.

The appellees got a decision in the trial court, whic

affirmed by the Circuit Court of Appeals (285 Fed., 128). To reverse these concurrent decisions of the two lower courts upon the single question of fact above stated is the purpose of the appeal now being prosecuted by the United States.

Statement.

The Mora Grant was originally made by the Republic of Mexico in 1835. Pursuant to section 8, chapter 103, of the Act of July 22, 1854, 10 Stat., 308, (*a*) the Surveyor General of New Mexico ascertained its "origin, nature, character and extent" and reported thereon to Congress, num-

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(*a*) Sec. 8, c. 103, 10 Stat., 308, reads as follows: "*And be it further enacted*, That it shall be the duty of the Surveyor General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act."

bering the claim as thirty-two in his report. The
on June 21, 1860 (12 Stat., 71), Congress confirm
grant. (*b*) In the Mexican proceedings and, as
the patent subsequently issued by the United States
114, fol. 132) its boundaries are described in these
terms: "On the North the Ocate river; on the S
where the Sapeyo (Sapello) empties; on the East the
de la Yegua, and *on the West the Estillero.*" (Ital
plied.) On August 15, 1876, the United States
ment issued its patent for the grant, (*c*) basing
an official survey thereof made in 1861 by one
Means, a deputy United States surveyor.

The United States patent also describes the g
accordance with the Means survey and fixes the n
corner at a point "inaccessible in the mountains
set," ten miles forty chains and fifty-four links w

(*b*) Section 3 of the Act of June 21, 1860, c. 167, 12 Stat.,
as follows: "*And be it further enacted*, That the private la
in the Territory of New Mexico, as recommended for confirm
said surveyor-general in his reports and abstract marked E
as communicated to Congress by the Secretary of the Interi
letter dated the third of February, eighteen hundred and s
numbered from twenty to thirty-eight, both inclusive, be,
same are hereby confirmed, with the exception of the claim
twenty-six, in the name of Juan B. Vigil, which claim,
twenty-six, is not confirmed."

(*c*) Authority for the issuance of the patent is found in
of March 3, 1869, Sec. 2, c. 152, 15 Stat., 342, as follows: "
further enacted, That the Commissioner of the General La
shall, without unreasonable delay, cause the lands embrace
several claims to be surveyed and plotted, at the proper e
the claimants thereof, and upon the filing of said surveys
in his office he shall issue patents for said lands in said
which have heretofore been confirmed by acts of Congress
veyed, and plats of such survey filed in his office as afor
for which no patents have heretofore been issued."

large mound of earth raised on the north boundary; and then (R., p. 133, fol. 154), for the west boundary proper, upon the location of which this case turns, the patent description, paragraphed here for convenience of reference, continues as follows:

(1) "Thence south from said point for northwest corner. At thirteen miles seven chains forty-one links on course, or one hundred and three miles forty-three chains sixty-nine links from beginning, *a stone thirty by nineteen by seven inches in size in large mound of stones and marked W. B. M. G. and on West side EO.*,

(2) "from which mound an aspen tree twelve inches diameter bears north seventy-four and one-half degrees East one hundred and seventy links distant which tree bears cut in it the letters W. B. M. G. and *the word Estillero*

(3) "and from which mound a pine tree seventeen inches diameter bears north three hundred and seventy-one links distant and which tree bears cut in it on the East side the letters W. B. M. G. and *the word Estillero*

(4) "and at the East side of which tree is *a stone twenty by twelve by three inches in size in a mound of stone and marked* W. B. M. G.

(5) "At thirteen miles nine chains seventy-one links *a trail to Picuris*, bearing northwest.

(6) "At thirteen miles twenty-five chains fifty-nine links *the Pueblo River* bearing northwest and southeast.

(7) "At thirteen miles forty-one chains ninety-one links at foot of a high mountain *a stone eighteen by twelve by five inches in size in a mound of stones and marked W. B. M. G.*

(8) "At thirty-three miles thirty-three
twenty-nine links on course or one hundre
twenty-three miles sixty-nine chains fifty-seven
from beginning, Southwest corner of the Mora
a stone twenty by fourteen by six inches in siz
mound of stones and marked S. W. C. M. G
standing on edge of a high mountain on left
of the Sapello river one hundred and fifty-two
north of the stream." (Italics supplied.)

Disregarding the trees, which have naturally disap
during the lapse of time since 1861, when Means s
marked them, the patent description of the west bound
the grant calls for three objects the location of each of
upon the earth's surface definitely fixed and
ascertainable beyond the possibility of mistake, na
First, *the Estillero,* called for by the EO stone men
in item (1) above and by the name "Estillero" cut on
ing trees mentioned in Items (2) and (3), and also
for by the Mexican grant description—"on the we
Estillero"—which is incorporated in the patent (R., p
fol. 132); secondly, *the trail to Picuris,* called for in
(5), and, thirdly, *the Pueblo River,* called for in Iten
The description calls also for four permanent monu
three of which, as it will presently appear, are found
on the earth's surface substantially in accordance wit
calls of the patent, namely: First, *the stone marked*
M. G. on one side and EO on the other, called for in
(1) above; secondly, *the stone marked W. B. M. G.,*
for in Item (4), and, thirdly, *the stone to the south*
Pueblo River marked W. B. M. G., called for in Iten
The fourth stone, the one mentioned in Item (8) abov
never been found.

The story of the original location of the west boundary of the grant is related by Means in his field-notes. Reference to that source discloses that the Estillero was pointed out to him by Jose Francisco Paiz, Manuel Antonio Paiz, and Antonio Lopez. Means went there (R., p. 97, fol. 113; p. 107, fol. 124) and ascertained it to be a portion of the valley of the Pueblo River through which ran a horseback trail known as the trail to Picuris. In the Estillero he erected and marked three stone monuments to designate the west boundary and ran a line north and south through them. He placed two of the monuments on the north side of the Pueblo River and the third on the south side. The north-and-south line then ran by him was about half a mile in length and crossed both the Pueblo River and the trail to Picuris. His field-notes describe the monuments, their markings and location, and their distance from each other and from the Pueblo River and Picuris trail (R., pp. 107, 108, fols. 124, 125). Although the west boundary is more than thirty miles long, the north and south line in the Estillero, between the stones there set and marked, was the only portion of it which Means actually surveyed or measured. The country through which the west line runs consists of high mountains, some of them over 10,000 feet high, and in 1861 it was wild, uninhabited and quite inaccessible, the only thoroughfare being the horseback trail already mentioned. Means reported that it was impossible to run his survey through this difficult stretch (R., p. 108, fol. 120; p. 109, fol. 126, and p. 111, fol. 128); he therefore calculated the distance north and south from the Estillero and reported the length of the west boundary as thirty-three miles thirty-three chains and twenty-nine links (R.,

p. 133, fol. 125). The Means survey was approved by the Surveyor General (R., p. 136, fol. 157).

The record herein shows that the first attempt to make an actual survey and location of the entire west boundary of the Mora Grant was in 1902, when the Commissioner of the General Land Office instructed J. H. Walker, a deputy United States surveyor, to survey it. His instructions were to go to the Estillero (the place in which Means reported he set his stones on the west boundary) and run a north and south line through it. Walker went there and found two of the stones which Means reported he had marked. He ascertained that they were in the correct location on the Pueblo River and in the proper relation to each other; he then ran a north-and-south line through them and actually carried it to its points of intersection with the north-and-south boundaries of the grant (R., p. 35, fols. 42, 43; p. 35, fol. 44; p. 47, fol. 45).

In 1909—seven years after Walker officially visited the Estillero—Alonzo E. Compton, also a deputy United States surveyor, was instructed to retrace the east line of certain public-land townships, which were established long after the grant patent was issued, by starting at a stone on the Sapello River, which is a part of the south boundary of the Mora Grant, and projecting a line north to the north boundary. In running this line Compton did not attempt to run the west boundary of the Mora Grant according to the patent description of that boundary (R., p. 20, fol. 24). It was not, he said, a part of his official mission to try to make his line conform to the lines called for in the patent (R., p. 20, fol. 25).

The distance between the line run by Compton in 1909 and

the west boundary of the Mora Grant as ascertained by Walker seven years earlier is about three and one-half miles, the Compton line being about that distance east of the west boundary as ascertained by Walker. The Government claims (R., p. 3, fol. 4) that the Compton line is the true west boundary of the grant. Neither in its pleadings nor in either of the lower courts did it advance any other claim to the tract in dispute, nor did it suggest any other boundary. Parenthetically it may be noted that in this court the Government changes its hold somewhat and attacks the correctness of the Means survey, upon which the patent issued in 1876, and asks that a new survey be ordered. But as no direct attack upon the patent is made or can be legally attempted now, that "instrument of quiet and security" is conclusive here and the Government must stand or fall on its original claim that the Compton line of 1909 is the true west boundary of the Mora Grant; and to sustain that claim it must prove the Compton line to be the boundary called for by the patent. The appellees contend that the west boundary described in the patent must, when located, be a due north and south line through the Means monuments in the Estillero; and that the Walker location of the west boundary conforms to those requirements.

The Compton line, claimed by the Government, does not conform to the distance requirements of the patent, nor does the Walker location do so. The reason for this discrepancy is that there exists a conflict between the natural objects and monuments called for by the patent (*i. e.*, the Pueblo River, the Estillero, the trail to Picuris, the EO stone and the stone south of the river) and some distances given in that instru-

ment. The theory of the appellant seems to be that as
Compton survey of 1909 was approved by the Surveyor G
eral and the Walker location of the west boundary was
it—the Compton survey, an *ex parte* survey made s
thirty-three years after the issuance of the grant paten
must constitute the true west boundary of the grant; and
despite the established and admitted fact that the Comp
survey does not conform to a single natural object, mo
ment, course, or distance specified in the patent, but was
in utter disregard of the patent description of the west bou
ary. In the situation presented by the facts of this cas
is the theory of the appellees that natural objects and mo
ments must control and that distances must yield according

Statement of the Argument.

I.

The appellant has not shown that the District Court or
Circuit Court of Appeals erred as to the effect of the evide
herein, and therefore, on appeal, this court, in accorda
with its established rule and settled doctrine, will follow
concurrent decisions of the lower courts.

II.

The calls of the patent for natural objects and monume
control the calls for distances.

III.

The traverse line from Upper Mora to the Estillero is n
proper matter for consideration; but, if considered, it wo
against the contentions of appellant.

IV.

The trial court did not commit error in limiting the effect of the plats and field notes of official surveys of townships adjoining the Mora Grant, nor in excluding land decisions as to the location of the west boundary of the grant.

V.

That the courts have neither original power nor power concurrently with the Land Department to correct surveys, is an elementary principle of our land law.

VI.

Such statements in appellant's brief as are not based on the record will doubtless not be given consideration.

ARGUMENT.

THE APPELLANT HAS NOT SHOWN THAT THE DISTRICT COURT OR THE CIRCUIT COURT OF APPEALS ERRED AS TO THE EFFECT OF THE EVIDENCE HEREIN AND, THEREFORE, ON APPEAL THIS COURT, IN ACCORDANCE WITH ITS ESTABLISHED RULE AND SETTLED DOCTRINE, WILL FOLLOW THE CONCURRENT DECISIONS OF THE LOWER COURTS.

The question of fact upon which this case turned in the trial court and in the Circuit Court of Appeals, and upon which it will doubtless turn in this court, is, Where upon the earth's surface is the west boundary of the Mora Grant? Stated in another aspect the question is, Does the strip of

land here in dispute lie to the east or to the west of the tru west boundary of the Mora Grant? These questions ar questions of fact. *Russell v. Maxwell Land Grant Co.*, 15 U. S., 253, at p. 259. The trial court held that the wes boundary of the grant is a north-and-south line through the stone monuments in the Estillero; that the Walker survey and ascertainment of that line in 1902 are coincident and coextensive with the west boundary described in the patent; and, in consequence, that the strip of land here in dispute lies to the east of that true west boundary and within the grant as patented by the United States (R., pp. 63, 64, fol. 76). On appeal, the Circuit Court of Appeals for the Eighth Circuit affirmed the decree of the trial court. Thus, there are here presented for review and reversal the concurrent decisions of two inferior courts, in the same case, upon a disputed question of fact.

With respect to such a situation, this court, in *Towson v. Moore*, 173 U. S., 17—a suit in equity to set aside a gift as having been obtained by undue influence, and for an accounting—has said:

> "A series of decisions of this court has established the rule, that successive and concurrent decisions of two courts in the same case, upon a mere question of fact, are not to be reversed, unless clearly shown to be erroneous. This rule, most often invoked in admiralty, is yet equally applicable to appeals in equity" (p. 24).

And four years after the decision of the Towson case, this court reiterated the rule there enunciated by Mr. Justice Grey, saying, in *Brainard v. Buck*, 184 U. S., 99, 105, a

suit for an injunction, to declare a trust and to compel the making of certain conveyances of title:

> "Upon the merits of the case, the two courts below have come to the same conclusion. The general finding of the trial court in favor of the complainants was a finding in their favor of all the material facts alleged in the amended bill, and those facts have been repeated and affirmed in the Court of Appeals, and we are now asked to review and reverse these findings, upon the testimony contained in the record. It ought not to be done in this case. *It is the settled doctrine of this court that the concurrent decisions of two courts upon a question of fact will be followed, unless shown to be clearly erroneous.*" (Italics supplied.)

Nor is the rule announced in the Towson and Barnard cases to be overthrown "merely upon a doubt created by conflicting testimony" (*Morewood v. Enequist*, 23 How., 491, at p. 495), nor "merely by raising a doubt founded on the number and credibility of witnesses;" nor will it do "to show that on one theory, supported by some witnesses, a different decree might have been rendered, provided there be sufficient evidence to be found in the record to establish the one that was rendered." *The Ship Marcellus*, 1 *Black*, 414, *at p.* 417. Finally, if it does not *clearly* appear that the lower courts erred in their conclusions of fact, the Supreme Court will accept their finding as "indisputable." *The Carib Prince*, 170 *U. S.*, 655, *at p.* 658.

Within the "established rule" and "settled doctrine" of this court has the appellant presented a reversible case on the facts? Answering, we turn to an examination of the evidence shown in the record.

The appellant, having under its pleadings the burden of showing that the so-called Compton line of 1909 is the true west boundary of the Mora Grant, introduced the testimony of Compton himself (R., pp. 15-29, fols. 19-35; pp. 54, 55, fols. 65, 66). Generalizing the testimony of this witness, it appears that "he accepted as the southwest corner" of the Mora Grant (R., p. 16, fol. 20), a sandstone 18 x 12 x 5 inches, which he says was 199 chains, 55 links west, and 73 chains, 16 links north of the northwest corner of the Las Vegas Grant, as re-established by Frank M. Johnson in 1899. (R., p. 11, fol. 15.) From this initial stone, which was not a marked stone (R., p. 23, fol. 28), the witness ran north three degrees, eight minutes west, and at 8.95 chains intersected the closing corner of Sections 2 and 11, Township 18 North Range 14 East; thence north one degree, fifty-eight minutes east, and at 86 chains and 42 links he intersected the closing corner of Sections 2 and 35, Townships 18 and 19, North Range 14 East; thence due north until he intersected a line projected due west from what he *assumed or concluded* was the last meander corner established by Means on the north boundary of the Mora Grant. The total distance run by the witness was thirty-one miles, seventy-five chains (R., pp. 16, 17; fols. 20, 21), more than two miles less than the patented length of this boundary.

Compton admitted that the line run by him did not cross either the Pueblo River or the Estillero, that its nearest point was "perhaps a mile distant" (R., p. 22, fols. 26, 27), and also that he found none of the marked stones or bearing trees called for by the patent and the Means field notes (R., pp. 21-23, fols. 24-29). Finally, and in the face of

the patent call for a due north and south line, he stated that he did not run an exact north and south line for the west boundary, but angled somewhat to the east; and that "he never ran the west boundary of the grant as such, as he was acting under specific instructions from the Department to project that line"—that is, the line he did project (R., p. 23, fol. 28). He "did not attempt to make his survey conform to the patent; could not say that he made attempt to have western boundary of grant conform to patent. In fact, he had not seen that part of the patent and did not have it with him" (R., p. 19, fol. 25).

This Compton line,—which touched no natural object or monument called for by the patent, and which was at its nearest point "perhaps a mile distant" to the east from the Estillero, and in the running of which no attempt was made to follow the description of the west boundary contained in the patent—this line, we repeat, is claimed by the Government to be the true west boundary of the Mora Grant.

The appellees, desiring to show a boundary line conforming to the requirements of the patent, introduced the testimony of J. H. Walker, who like Compton, was a deputy United States surveyor at the time he made his survey and ran out the so-called Walker line in 1902, under directions, be it noted, from the Commissioner of the General Land Office to go to the Estillero and run a line north and south through it (R., p. 34, fol. 42).

Walker went to the Estillero and there found two of the stones marked by Means. One of them, to the north of the Pueblo River, was pointed out to him by one Casimiro Pais (R., p. 34, fol. 42), who had lived in the Estillero a great

many years, and who is a son of one Jose Francisco Pa who, with J. Cordova, built a fort in the Estillero so time during the period 1861 to 1866 (R., p. 46, fol. 5 The stone shown to Walker by Casimiro Pais was at right of the road at the lower end of the Estillero Valley a up just a short distance on the slope of the hill—probab a hundred yards up the hill above the foot of the mounta (R., p. 37, fol. 45). When Walker first saw the stone had fallen to the ground. He examined it, and, on tu ing it over, found on the under side, and "easily legibl the letters EO. Thereupon he re-examined the upper or posed side and found the letters W. B. M. G. They h grown full of rock moss and were difficult to distingu at first, but on close examination they were "perfectly d tinct." As the stone lay on the ground when Walker fi saw it, it would, he said, be revealed only on close exami tion. The entire exposed surface was covered with r moss; and the marks on the stone "must have been qu old, because that moss takes a long time to grow on a ston (R., p. 35, fol. 42). Walker had with him a copy of t field notes of Means' location of the EO stone which t latter said he had placed at the Estillero; and the measu ments of the stone and the Pueblo River agreed very clos with the distance given by Means (R., p. 35, fol. 43).

Walker also saw the trail to Picuris, going south fr the EO stone and before reaching the Pueblo River. It w very faint at that point, but he measured the distance tween the EO stone and the trail and "it agreed very clos with that given by Means" (R., p. 35, fol. 43). But Mea had said in his notes (R., p. 108, fol. 125) that he also a stone south of the Pueblo River and 34 chains 50 lin

distant from the EO stone, and had marked it W. B. M. G. So from the EO stone Walker measured off thirty-four chains and fifty links south and across the Pueblo River, and at the end of that distance he found another monument, a stone marked W. B. M. G. He saw a few scattered stones near this second stone "as evidence that it had been a monument" (R., pp. 35, 36, fol. 43).

Walker also examined the topography and found that it agreed with that given by Means in his field notes. He also ran a line to the south of the south stone and found the character of the country "very mountainous"; and on running a line to the north of the north or EO stone he found the country "extremely mountainous." There was a high mountain at the place where he found the EO stone and that stone "was right at the foot of a mountain as Means' notes called for." It was quite mountainous where the south stone was found (R., p. 36, fol. 43).

As to the third stone, Jones (R., p. 53, fol. 54) testified that he found an old stone marked W. B. by Means.

The whole valley in which the stones were found by Walker is called the Estillero Valley. Walker says it begins on the north at Angostura de los Caballos, that is, the narrow pass, and extends in a general northwest and southeast direction, and is not a wide valley. (R., p. 37, fol. 45.)

That the stones found by Walker at the time of his official survey in 1902 are the identical stones set in the Estillero and marked by Means in 1861, is made apparent by the uncontradicted testimony of many other witnesses.

Casimiro Paiz, it will be recalled, pointed out the EO stone to Walker in 1902. His father before him, Jose Fran-

cisco Paiz, and his uncle, Manuel Antonio Paiz (both d
many years, R., p. 50, fol. 60) had pointed out the Estil
to Means in 1861 (R., p. 107, fol. 124). Casimiro and
father, Jose Francisco, were personally known to Pedr
Duran, a witness for appellees, whose own father had
stock which frequently got into the Estillero. Into
little valley Pedro would go to hunt them, and in doin
he "frequently traveled the Picuris trail that ran thro
the Estillero." His father pointed out the EO stone to
for the first time in 1866 or 1867. It was on the right h
side of the road coming from the Angostura de los Cab
to Mora, "about sixty or seventy yards from the road u
the hill," and not far from the house of Clemente Ma
(R., pp. 45, 46, fol. 55).

For fifty years Clemente Maestas knew the Estillero
for fifteen years he lived there in a house located about
hundred yards from the Angostura de los Caballos and s
three hundred yards west of the Estillero Spring. Like
father of Duran, Maestas' father also had cattle in t
which the younger Maestas took care of. "They would g
in the Estillero, and go along the Picuris trail to Mo
For thirty-five or forty years Maestas has known the st
near the Estillero Spring (the EO stone), has seen it at
tervals during that period, *and knows that it is now in
same place as when he first saw it.* Moreover, he has kn
of the stone on the south side of the Pueblo River for
same length of time (R., p. 47, fol. 56).

Antonio J. Romero, subpœnaed by plaintiff but calle
the stand by defendants, said he was eighty-two years
and lived in the Valle de Arriba (Upper Valley); that
knew Casimiro Paiz and also Jose Francisco Paiz; that he

known the country around the Angostura de los Caballos and the Valley of the Pueblo River since he was seven years old. He also knows the Picuris trail and the house where Clemente Maestas lives. Casimiro Paiz once lived there. He, Romero, was with J. Cordova and Jose Francisco Paiz some time between 1861 and 1866 when they were building a fort in the Estillero, about five hundred yards from the Maestas house. They told him that they were building it there "on account of the grant line," and that there was a mound of stones over across the river. This mound Romero saw "often as he went by along the road." "The place was known as the Estillero in those years" (R., p. 46, fols. 55, 56).

Jesus Medina, seventy, a resident of Chacon, above Mora, has known the Estillero and the Angostura de los Caballos for fifty years; and in 1868 or 1869, for the first time, he saw from the Picuris trail a stone about one and one-half feet high located about one hundred yards from the Estillero Spring. "The country from the Angostura (de los Caballos) up to the Canon Abequesenos has always been called the Estillero; never heard of any other place called the Estillero" (R., p. 47, fol. 57).

And two other old men, Juan Andres de Luna and Hemerejildo Vigil, each seventy-two, the first a resident of the Valley of Canoncito since he was nine or ten years old, and the second, formerly a resident in the Estillero in a house he built there in 1886, have known the Estillero and the EO stone since the early years. Vigil has known the Estillero "since he was old enough," also the Estillero Spring and a mound of stones nearby. This mound he first saw some time during the years 1866-1868, when there was a marked stone in the ground about one hundred or one hundred and

fifty yards from the Estillero Spring near the Picuris
De Luna has known the Estillero and the Estillero Sp
since 1874. The trail to Picuris crosses on the upper
and close to the spring, he said, and in those years there
a mound of stones a hundred or a hundred and fifty
northeast of the spring. Both Jose Francisco Paiz and
son, Casimiro, called his attention to this stone. Vigil
the Estillero extends from the Angostura de los Caball
Los Alamitos; de Luna, that it is the Valley of the Esti
through which the Pueblo River runs (R., pp. 47, 48
57; p. 49, fol. 59).

Segundo Garcia, sixty-five, and a resident of Holma
his life, also said he knew the Estillero on the Pueblo R
likewise the Estillero Spring. The latter is, he testifie
front of the fort where Clemente Maestas lives; and
Picuris trail passes by it, and there is a mound of stone
it which he first saw about 1876. Moreover, all this v
from Alamitos to Alcahuize is called the Estillero (R
48, fol. 58).

The appellant offered no testimony tending to contr
the testimony of these six old residents of the Estillero
nearby places. One of appellant's witnesses, Father Cl
Ballan, admitted that he had heard the term Estillero
plied as including the Alamitos and the whole valley be
the Angostura de los Caballos (R., p. 55, fol. 66); and
Blas Gallegos, said some people say the Estillero "runs
down below" the summit over which the Picuris trail p
(R., p. 56, fol. 66); a third, Pedro Bernal, said that a
as he knew, it extended about a mile down the Pueblo
taking in the Angostura de los Caballos and down to
Clemente Maestas house (R., p. 56, fol. 67); and the fo

Agapito Abeyta, that it extends from the Canon of the Abequesenos down to the Angostura de los Caballos (R., p. 57, fol. 68).

That knowledge of the Estillero itself was not limited to the immediate vicinage of that spot but was rather widespread within less than seven years after Means visited there, is shown by an early reference to the place, definitely fixing its location, which is found in the Act of the Legislature of New Mexico of January 30, 1868, establishing the boundary between Taos and Mora counties. (See Appellant's brief, at p. 16.) The act is still in force (Section 1091, Code 1915), and is in terms as follows:

> "The boundary dividing the Counties of Taos and Mora shall hereafter be as follows, that is to say, west of the Valley of Mora, a line running north, commencing at the first hill west of the said Valley of Mora and east of the Jicarita, *crossing the Vega de Estillero opposite Canada del Raton,* passing through the said Canada until it reaches the foot of the Osha Hill." (Italics supplied.)

From this act several things are apparent. In the first place, the Estillero was evidently a well known location as early as January, 1868 (only seven years after the Means survey), since it was at that time of sufficient prominence to be used as a call on the boundary between two counties. In the second place, it is referred to as the "Vega" of the Estillero, this word meaning meadow and being universally used of land lying along a river, thus corresponding with the situation in the Valley of the Pueblo River described by Means and also by Walker and other witnesses for the appellees. In the third place, the county line is to cross the

Estillero opposite the Canada del Raton. This Canada is a well known place frequently referred to in the record herein, and is definitely located by Surveyor Vincent K. Jones on the map of that portion of the Valley of the Pueblo River which he prepared (R., p. 145). The original exhibit, Defendants' Exhibit A, is before the court for inspection. The Canada del Raton is the northernmost of the two deep canyons shown coming into the Valley of the Estillero from the east. The legislative act, therefore, definitely establishes this point as being within the Estillero.

From the foregoing testimony and the legislative act, it would seem irresistibly to follow that the EO stone found by Walker in the Estillero in 1902 is the same stone as the stone seen there by Casimiro Paiz in 1866 or 1867, by Vigil between 1866-1868, by Medina in 1868 or 1869, which was pointed out to de Luna in 1874 by both Casimiro Paiz and his father Jose Francisco Paiz; and also that it is the same EO stone which Means reported he placed in that spot in 1861, when the Estillero was pointed out to him by Jose Francisco Paiz and Manuel Antonio Paiz.

Here it is not inappropriate to show that even the possibility of any place on the Pueblo River other than the Walker location of 1902 answering topographically and otherwise to the spots called for by Means as the Estillero and as his monument sites is entirely eliminated from the case. Upon this point appellant says in its brief (p. 19) that, "A. E. Compton, a witness for plaintiff, testified that there were a number of places where the stones could have been placed in the valley at the proper distance from the river."

At one place in his testimony (R., p. 27, fol. 33) Comp-

ton did say, flatly, "any number of places could be found along it (the Pueblo River) where the stones could be placed in proper relation," and that at "any point from the mountain divide westward for perhaps two miles, the stones could be moved up and down, he believed." But, he hastened to add that "that was his personal belief;" and that "he had made no survey of the Pueblo River to ascertain the truth of this statement. He didn't make any measurements. He was judging from eyesight by driving along through the valley there." But even this possibility thus raised by Compton's expression of casual opinion, based merely on what he saw while "driving along through the valley there," was eliminated by Vincent K. Jones, a witness for appellees, who ran "several lines through the valley, taking detailed topography of the whole valley, tying onto the different objects" (R., p. 38, fol. 46). Upon the basis of his examinations and measurements this witness made a map (Defendants' Exhibit A) of the Estillero showing correctly the true relative positions of data thereon (R., p. 38, fol. 46). G. D. Kirkpatrick, a Government witness, examined this map "and found it to be substantially correct" (R., p. 53, fol. 63). Jones also made a small map (Defendants' Exhibit E, R., p. 151), to proper scale, showing the relative position of the Means stones, the Picuris trail and other land marks, called for in the patent, with the Pueblo River. This he placed over various portions and locations shown along the Pueblo River on the large map (Defendants' Exhibit A) to show the points of agreement or disagreement with the land marks called for in the patent." He was unable to find any other place on the Pueblo River from the Angostura south that would check

with the topography and Means' calls" (R., p. 39, fol. 47).

Lastly, and conclusively upon this point, the issue here is not as to where Means could have set stones, but as to where he did set them.

Thus far, therefore, it would seem to be clear that Walker actually found in 1902 the exact spot called for in the patent and in Means' field notes as the west boundary of the Mora Grant, and visited and marked by Means in 1861. At all events, Walker, thoroughly convinced by his investigations that he had found the point fixed and marked by Means in 1861, ran a north and south line through the stones for eleven or twelve miles north of the Estillero, where the country was extremely mountainous, and south to the Sapello River, marking the line as far as possible by monuments, marked stones and blazed trees. From the Estillero stones to the Sapello River "the country was something fierce, very mountainous" (R., p. 36, fol. 44).

That the testimony with reference to the location of the Estillero appears to be conclusive in favor of the Walker location thereof is shown by the summary of it made by the District Court in its opinion. That summary, concurred in by the Circuit Court of Appeals in its decision, is as follows:

> "The Estillero, as shown by the evidence is a place in the valley of the Pueblo River extending down the valley of the Pueblo River from the Canon de los Abequesencs or Canon de los Ratones on said river to the Angostura de los Caballos along said river for a distance of about two and one-half miles" (R., p. 59, fol. 71).

If anything further than Means' own statement in his field notes that the Estillero was at or along the Pueblo

River, were essential to prove the place as a definite portion of the valley of that river, the evidence above set out, all absolutely uncontradicted, would supply it. Yet, in the face of this situation, appellant in its brief, on pages 17 and 18, says:

> "The most that can be gathered from the record is that the Estillero is a plain, valley or vega and that it is located somewhere in the range of mountains that Means refers to as constituting the west boundary of the grant. But there is one point not to be overlooked. It was pointed out to Means from the plaza in Upper Mora, and therefore it could be seen from the valley."

Again, on page 17 of its brief, appellant says:

> "Means in his field notes refers to it (the Estillero) as a low place in the mountains pointed out to him from the plaza in Upper Mora, which latter place has been identified as the present town of Cleveland."

And yet again, on page 20 of its brief:

> "The EO stone of Means was set in a place visible from Upper Mora in the valley."

Credo quod habes, et habes. But there are difficulties here; for to entertain such belief or to make such statements, counsel for appellant must close their minds to the recitals in the field notes, the patent, the legislative act of 1868, and testimony of the witnesses, some of whom—Father Ballan, Blas Callegos, Pedro Bernal and Agapito Abeyta—testified on behalf of the Government. A mere inspection of the patent itself would seem also to be conclusive upon the point that the Estillero is a portion of the valley of the Pueblo

River. This river is a fairly large and well known stream, one of the chief tributaries in New Mexico of the Rio Grande, designated on any large map of the State. Presumably it takes its name from the Pueblo of Picuris, a prehistoric Indian settlement located upon it. From its course to its junction with the Rio Grande, it has a length of some fifty miles. The naming of it in the patent is as plain a designation of a definite stream as would be the naming of any one of the secondary streams of the State.

Another difficulty with appellant's statements is that Means, in his field notes under date of July 31, 1861, the page being headed "Upper Mora" (R., p. 97, fol. 133), says: "Having been shown the point of the mountain which is called Estillero in the Grant, by Antonio Lopez & Mr. Paiz. I took its bearing * * *." Then he sets down a northwest course and gives some distances, among the latter being the following:

> "At 5 miles 36 chains 30 links, on N. W. edge of mountain. At 6 miles, to low place in mountain. *At 7 miles, entered bottom between mountains. At 7 miles, 32.50 chains, to place called Estillero on West boundary. The point called Estillero is a low place on mountain north of a trail from Mora to Picuris.*" (Italics supplied.)

And under date of November 8, 1861 (R., p. 107, fol. 124), Means' field notes read, in part:

> "5 miles 36.35 chs. on N. W. edge of mountain. 6 miles descend to low place in mountain. *7 miles in bottom between mountains. 7 miles, 32.50 chs. to the place called the 'Estillero' pointed out to me by Jose Francisco Paiz and Manuel Antonio Paiz at this time.* * * *." (Italics supplied.)

The notes then relate the setting of the stones for the west boundary of the grant. There is no evidence that the Estillero could be seen from Upper Mora, or that Means said it could be seen from that place. The only evidence is that which we have quoted above. Means plainly reports that he set his stones at the Estillero which was 32.30 chains west of the "bottom between mountains," which in turn was seven miles, according to his report, from the plaza in Upper Mora. Just how any inference can arise that this place where Means set his stones could be seen from Upper Mora, or from the Mora Valley, is more than we care to speculate about, even assuming that Means said the Estillero was pointed out to him *from Upper Mora*. The fact is Means never said the Estillero could be seen from Upper Mora or the valley. His field notes may be searched in vain for any statement from which that meaning can even be tortured. To permit the attempted inference of visibility to weigh in this matter would be to disregard the patent location of the Estillero with reference to the Pueblo River; and that river is west of a high mountain which rears its crest nearly a thousand feet directly between the river on one side and Upper Mora on the other.

The line run by Walker in 1902—a line which answers to and is based upon the natural object and monument calls of the patent (the Estillero, the Pueblo River and the trail to Picuris; the EO stone and the stone south of the Pueblo River) and to the topography called for in the Means' field notes—this line is claimed by the appellees to be the true location on the earth's surface of the west boundary of the Mora Grant.

The statement is made in appellant's brief (p. 10) that

"both surveyors who testified for the defendants—Jol
Walker and Vincent K. Jones—admitted on cross-exa
tion (1) that the line run by Walker was a considerab
tance west of the line called for by Means' field notes
that neither of the stones found by Walker is situated
base or foot of a mountain; (3) that each stone is up o
side of a mountain quite a distance from the base; an
that the land north of the EO stone and south of the
stone could be surveyed without difficulty."

Reference to the record (*vide* p. 36, fol. 44) shows
Walker said, as to appellant's first statement, that "he di
remember the distance from the northwest corner of th
Vegas Grant to where witness' (his) line intersected
Sepello, but it was probably something like five miles; i
considerably more than Means' notes called for. *
The stones (in the Estillero) were two or three miles fa
west than the *distance* given in Means' field notes for th
tance from *Upper Mora* to the stone."

But Means' field notes, and the patent as well, in add
to calling for certain distances, also called for the Esti
the Pueblo River and the trail to Picuris; also for th
stone and a stone south of the Pueblo River; and the
fact that the Walker line may have been located farther
than the distances given by Means, or in the patent, is
moment if the natural objects and monuments called fo
the patent shall be held to control. This is a legal que
which will be discussed presently.

As to appellant's second and third statements above qu
the record shows (R., p. 36, fol. 43) that Walker said
place where the stones were found was "right at the fo
the mountain as Means' notes called for," that it was situ

"a distance of probably 100 yards up the hill above the foot of the mountain" (R., p. 37, fol. 45), and that the "southernmost stone is right at the foot of the mountain" (R., p. 37, fol. 42). Vincent K. Jones said (R., p. 39, fol. 47) "The EO stone is on a low ridge which witness would say corresponds to the call in Means' field notes, low place in the mountain." Walker also testified (R., p. 36, fol. 43) that the topography of the place where the stones were found "agreed with that given by Means in his field notes." Moreover, the fact that the stones are not found at the exact base of the mountain, which would be in the bed of the Pueblo River, but about 100 yards from its lowest point, is surely not a discrepancy worthy of serious consideration.

As to the appellant's last statement: Walker testified (R., p. 36, fol. 43) that, "He ran a line to the north of the north stone that he found, and found the character of the country extremely mountainous. There was a high mountain at the place where the northernmost stone was found, and it was quite mountainous where the southern stone was found." There is nothing in Jones' testimony about this.

With respect to the marked stones and the west boundary the District Court concluded, and its conclusions were approved by the decision of the Circuit Court of Appeals, as follows:

> "The evidence conclusively shows that the stone marked W. B. M. G. and EO (called for in the patent, and the center stone) and the stone south of the Pueblo River at the foot of the mountain are now in substantially the same place at which they were placed by Means as called for in his field notes. This was established by the evidence of old men, some of whom have known the EO stone in its present location since

the year 1866; other witnesses have known of th
stone in its present location for thirty or forty yea
* * *

"It is conclusively established by the evidence th
the west boundary of the Mora Grant called for in t
patent was established by Thomas Means, when ma
ing his official survey, at a point on the Pueblo Riv
where the monuments are now found in place an
claimed by the defendants to be the west boundar
of the Mora Grant" (R., p. 61, fol. 73).

From the foregoing rather extended review of the test
mony it appears, we submit, that upon the question of t
situation of the Estillero and the stones called for by the pa
ent as marking the west boundary, neither the District Cou
nor the Circuit Court of Appeals could have found otherwis
than they did find. It certainly cannot be fairly said, w
conceive, that it clearly appears that the lower courts erre
in their conclusions of fact. On the contrary, the evidenc
overwhelmingly establishes the conclusions of fact at whic
the lower courts arrived, and there is no substantial evidenc
to the contrary. Appellant's original theory upon which thi
case was tried and decided, that the so-called Compton lin
is the true west boundary of the Mora Grant, is not supporte
by a scintilla of testimony. That line answers to nothin
called for in the patent or in Means' field notes and it wa
run, admittedly, without reference to the patent or Means
field notes and without the slightest attempt to cause it to con
form to either the patent or the notes. It cannot be sai
that appellant has even raised a doubt herein founded o
the number and credibility of witnesses, for no such thin
is even so much as inferentially attempted. In short, if any

attack at all is made by appellant upon the findings of fact made by the trial court, it is only by the most circuitous indirection and the most tenuous of inferences. It would therefore seem that in this case the "established rule" and "settled doctrine" of this court should be adhered to and the concurrent decisions of the two lower courts upon these questions of fact followed because they are not clearly shown to be erroneous.

It is submitted that the stones found by Walker in 1902 are the stones set by Means in 1861, and that Walker found them where Means set them. A due north and south line through them, extended to the north and south boundaries of the grant, responds perfectly to the patent calls for courses, natural objects and monuments.

II.

THE CALLS OF THE PATENT FOR NATURAL OBJECTS AND MONUMENTS CONTROL THE CALLS FOR DISTANCES.

According to the patent the west boundary of the Mora Grant is a line thirty-three miles, thirty-three chains and twenty-nine links in length running due north and south through the Estillero and the marked stones therein. The northwest corner is "inaccessible in the mountains and not set," ninety miles, thirty-six chains and twenty-eight links from the beginning point at the southeast corner of the grant (R., p. 133, fol. 154). The southwest corner, according to the patent (R., p. 133, fol. 154), is "a stone twenty by fourteen by six inches in size in a mound of stones and marked S. W. C. M. G., and standing on edge of a high mountain

on left bank of the Sapello river one hundred and fif
links north of the stream." Its position was *calculat*
Means as being 2 miles, 3.10 chains due west of the
west corner of the Las Vegas Grant as established b
ham and Clements on the right bank of the Sapello
(R., p. 99, fol. 115). After so calculating, Means r
that he ran two miles 3.10 chains west of the northwe
ner of the Las Vegas Grant and there set a stone 20 x 1
inches in size and marked it S. W. C. M. G. (R., p. 10
126). This stone has never been found.

It will be remembered that the distance calls an
monument and natural object calls are in conflict,
plainly evidenced by the fact that a line (*e. g.*, the W
line of 1902) running due north and south throug
Estillero and the marked stones therein, and extendin
north and south until it intersects the north and
boundaries of the Mora Grant, places the northwest cor
which is "inaccessible in the mountains and not set"-
miles and twenty-seven chains farther west than the
distance would permit, and places the southwest cor
whose position was also *calculated and which has never
found*—about three miles farther west than the paten
tance would place it. The Compton line, which answe
patent call for objects, monuments, courses or dist
would place the northwest corner one mile, thirty
chains and eighty-eight links farther east, and the sout
corner 36.45 chains, farther west than the patent dis
call for.

As these discrepancies cannot be reconciled, either th
tance calls must give way to those for natural objects
monuments or the calls for natural objects and monu

must give way to those for distance. If control be given to natural objects and monuments—the Estillero, the Pueblo River and the marked stones—the Walker line of 1902 constitutes the correct location of the west boundary on the earth's surface, because it is a due north and south line through the Estillero and the marked stones therein. If control be given to distances, neither the Walker line nor the Compton line is correct, because neither answers the requirements as to distance and, moreover, the Compton line is not on the specified north and south course. In this situation the Government cannot, consistently with legal principles, argue that the Compton line is the correct boundary. The most it can do is to argue that the Walker line does not represent the correct boundary, even though such an argument does not assist the Compton line, in advocacy of which the Government came into court. Nevertheless, the relative value attributed by the courts to conflicting distance specifications and object and monument calls is of interest.

Ever since land surveying has been a profession, mistakes have been frequent and descriptions of land have been prepared and used in which inconsistent calls have appeared. The courts have uniformly held that courses and distances must yield to objects and monuments, and this because it is much more likely that the mistake occurred in the measurement or statement of the courses or distances. A surveyor in writing up his notes may easily write "southwest" for "northwest," or "64 degrees" for "46 degrees;" chainmen in measuring may easily report a distance as being 1,000 feet instead of 2,000 feet. Where distances are computed instead of being actually measured on the ground, as is the case with the distances called for in the patent for the Mora Grant,

substantial errors may easily creep in. But it is ex
unlikely that a surveyor will report that he reached or
a certain river when he did not in fact do so. The
and marking of stones, the marking of trees, and th
ing of a river are deliberate acts as to which the s
could make no mistake; and if the statements as t
are incorrect, it is the result of falsehood, not error.

An early case in which the situation was much li
here is *Newsom v. Pryor's Lessee*, 7 Wheat., 7, a c
by Chief Justice Marshall. The land was on Duck
in Tennessee, and the call in question in the patei
"south 894 poles to a stake, crossing the river." Th
tion was as to whether the distance stated or the call
river should control, the river being in fact 1,222 po
tant instead of 894. The circumstances of this case a
similar to those here. The court said:

> "In consequence of returning plats, wh
> actual surveys had been made, and where th
> try had been very imperfectly explored, the d
> tion contained in the patent often varies mat
> from the actual appearances of the land inten
> be acquired. Natural objects are called for, in
> where they are not found; and the same obje
> found where the surveyor did not suppose th
> be. In a country of a tolerably regular surfa
> considerable inconvenience will result from th
> cumstance. The course and distance of the
> will satisfy the person claiming under it, and
> interfere with the rights of others. But in a c
> where we find considerable water-courses and
> tains, there must be more difficulty. The su
> calls for some known object, but totally mi
> lates its courses, distances, or both, from some

point which he has made the beginning of his survey; and there is a variance in the different calls of his survey, and of the patent founded on it. As in this case, the second line is to run south 894 poles to a stake, crossing the river. This distance will not reach the river; and must be continued to 1,222 poles, to cross the river. The distance must be disregarded, and this line so extended as to cross the river, or the distance must control the call for crossing the river.

"These difficulties have occurred frequently, and must be expected to occur frequently, where grants are made without an actual survey. Some general rule of construction must be adopted; and that rule must be observed, or the conflicting claims of individuals must remain forever uncertain. The courts of Tennessee, and all other courts by whom causes of this description have been decided, have adopted the same principle, and have adhered to it. It is, that the most material and most certain calls shall control those which are less material, and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance. These decisions are founded on two considerations. Generally speaking, it is the particular intention of the purchaser, to acquire the land lying on the stream called for, as being more valuable than other land; and in every case where a natural object is mentioned, it designates the land surveyed, had there been no actual survey, much more certainly than course and distance can designate it. In this case, for example, the surveyor says that he has run south 894 poles, to a stake, crossing the river. Now, it is much more probable, that he should err in the distance, than in the fact of crossing the river. The conclusion,

therefore, had no actual survey been made, would be, that the line did cross the river.

"The general effect of this principle undoubtedly is that the purchaser acquires more land than is expressed in his grant, and more than he has paid for. Where this has been thought an object worthy of legislative attention, provision has been made for it. Courts cannot now shake a principle so long settled, and so generally acknowledged."

In passing it should be noticed that the call in question was lengthened by two-thirds of a mile so as to reach the river, and the area of the grant thereby increased by about one-sixth, a much greater increase than results from the application of the same principle to the west boundary of the Mora Grant.

This case is direct authority for our position that no survey of the west boundary of the Mora Grant can be accepted which does not reach the Pueblo River as called for in the patent.

As the rule thus enunciated by Chief Justice Marshall is a "familiar" one, *Morrow v. Whitney*, 95 U. S., 551, at p. 555, instead of setting out excerpts from the numerous authorities in which it has been phrased and applied we merely cite some of the leading ones: *McIvers, Lessee, v. Walker*, 9 Cranch, 173, 178; *Preston's Heirs v. Bowmar*, 6 Wheat., 580; *Chinoweth v. Haskell*, 3 Pet., 92; *Brown v. Huger*, 21 How., 305, 318; *County of St. Clair v. Lovingston*, 23 Wall., 46, 62; *Clement v. Packer*, 125 U. S., 309; *Ayers v. Watson*, 137 U. S., 584; *Spreckels v. Brown*, 212 U. S., 208, 218; *Silver King Coalition Mines Co. v. Conklin Mining Co.*, 255 U. S., 151.

So far as the intention of the parties is concerned, there can be no doubt that it was the intention of everyone that the west boundary of the grant should run through the Estillero. That was the original call for the grant and a line through it was the line which Means was attempting to establish. That he intended his survey to run north and south through the stones on the Pueblo River which he set at the Estillero, is an undoubted and indisputable fact. The approval of his survey and the carrying of these calls into the patent was an adoption of his intention by the Land Department of the United States.

The natural objects and monuments called for in the patent are found on the Walker line, and on no other. The distance of the line from other points is incorrectly stated. In view of the foregoing authorities, this discrepancy is unimportant.

Upon this phase of the case, the District Court said:

> "The controlling call in the patent for the west boundary of the Mora Grant being established from the evidence on the ground, that is, natural objects—the Estillero, the trail to Picuris, the Pueblo River, and the permanent monuments, stone marked EO on one side and WBMG on the other, stone marked WBMG, all now being located in the relative positions called for in the patent, these calls for natural objects and permanent monuments on the ground definitely located, they must control as the west boundary. This being established I cannot find any other facts and circumstances in this case which would constitute an exception to the general rule of law that courses and distances must yield to natural objects and permanent monuments called for in the patent.
>
> "I therefore conclude that the true west boundary

> of the Mora Grant is a north and south line dra
> through the monuments, at the Estillero on t
> Pueblo River, set by Thomas Means, in 1861, a
> found in place on the ground by J. H. Walker,
> 1902 and now in place on the ground, and the Uni
> States, by its patent for the Mora Grant, convey
> all of the lands west of the so-called Compton line
> a point where said north and south line intersects t
> north boundary of the Mora Grant and on the sou
> to a point where said north and south line reach
> the Sapello River, and the United States has no rig
> title or interest in said land."

The distances called for in the patent in the last cou
on the north and south boundaries must be extended
meet the line drawn north and south through the Estille
monuments. No "gap" results and the survey is comple

At pages 18, 22, and 23 of its brief the Government offe
to this court the suggestions that "the Estillero being giv
as one of the bounds of the grant, the survey of the lat
should extend only up to it and should not include it"; th
the Means' "survey must be rejected as fraudulent, becau
he did not survey the traverse line by which he is suppos
to have reached the place of the stones"; and that "he s
them at random and did not know where he was when h
did so." These points were not raised below and are pro
ably afterthoughts here. Moreover, the Government ca
into court and has litigated this case upon the express theo
(R., p. 3) that the west boundary as patented is the corre
boundary of the grant. In any event the suggestions r
ferred to cannot assist the appellant. The Means survey
1861 on which the patent of 1876 was issued, and which
made a part of that patent under the seal of the Unite

States and the signature of the President, ascertained the extent of the Mora Grant and separated it from the public domain. *Stoneroad v. Stoneroad,* 158 U. S., 240, at p. 251. It is binding in this court, *Stoneroad v. Stoneroad, supra; Knight v. United States Land Association,* 142 U. S., 161, at p. 176; *Cragin v. Powell,* 128 U. S., 691; *Russell v. Maxwell Land Grant Co.,* 158 U. S., 253, at p. 256, irrespective of the manner of its making; for, "However arrived at it was adopted by the United States for its grant and it cannot now be collaterally impeached." *United States v. Coronado Beach Co.,* 255 U. S., 472, at p. 488. Furthermore, by the patent "the Government declares that the claim * * * is correctly located now so as to embrace the premises as they are surveyed and described. As against the Government, this record, so long as it remains unvacated, is conclusive." *Beard v. Federy,* 3 Wall., 478, quoted with approval and as in point in *Russell v. Maxwell Land Grant Co., supra,* at p. 257.

Concluding on this phase of the case at bar, it is submitted that the calls of the patent for natural objects and monuments must control the calls for distances, and, therefore, the decisions of the two lower courts as to the location of the west boundary of the grant on the earth's surface are correct.

III.

THE TRAVERSE LINE FROM UPPER MORA TO THE ESTILLERO IS NOT A PROPER MATTER FOR CONSIDERATION; BUT, IF CONSIDERED IT WORKS AGAINST THE CONTENTIONS OF THE APPELLANT.

So far in this brief, we have, with but few exceptions, confined ourselves to a discussion of the description as con-

tained in the patent, and the argument might very properly end here. But an attack is attempted by the Government (Brief, pp. 17, 20) upon the Walker survey, and upon the boundary of the grant as claimed by the appellees, based upon the statement contained in the field notes of Thomas Means as to the distance between the Estillero and Upper Mora. Means says in his field notes that from the center of the Plaza in Upper Mora, he ran north 42 degrees, west 7 miles, 32.30 chains "to the place called the Estillero pointed out to me by Jose Francisco Paiz and Manuel Antonio Paiz at this time" at which place he set the "stone marked on east side WBMG for west boundary of Mora Grant and on west side EO for Estillero," and the other stones under discussion (R., pp. 97, 107). If it were not for this statement of distance in the field notes, in all probability the stones and natural objects called for by the patent and Means' notes would have been accepted by everybody, and this controversy would not have arisen. The importance attached to this recital by the United States requires us to give some attention to it.

It must be remembered that the patent makes no reference to this course or distance. It fixes the west boundary by the call for the marked monuments, the Pueblo River and the other natural objects, and there was no reason why a tie should be made from them to a point over seven miles away. Throughout the trial of this case it was, and it still is, our contention that the boundary must be determined by the calls given in the patent and that it is not proper to confuse them by importing extraneous matter from Means' field notes or from any other source. The patent speaks for itself. Unless the description contained in it is so ambigu-

ous that the land conveyed by it cannot be identified, it needs no assistance from elsewhere.

The use of the call for the distance from Upper Mora gives no support to the contention of the United States for the Compton line. The Government claims at one moment that the Compton line is the "true" west boundary of the grant and at the next that the important call in determining the west boundary is the distance stated in the Means' field notes from that boundary to Upper Mora, totally disregarding the fact that the boundary if fixed in this way would fall several miles to the west of the Compton line.

In addition to the fact that this course and distance are not called for in the patent, and that even if called for in the patent they would be controlled by the natural objects and permanent monuments called for, there are other reasons why they should be disregarded.

The traverse line (R., pp. 94-99) of which the tie from Upper Mora was part, commenced at a mound of earth south of the Black Lake which was referred to in the testimony as MC 13. This mound has now disappeared, at least none of the several surveyors who searched for it and who testified in this case was able to find it, so that the very beginning point of the traverse line is today uncertain. Wherever that point may have been, it is a physical impossibility to run out upon the surface of the earth this meander line as given in the Means' field notes and make it check with any of the points for which he calls. Whether this is because he did not actually run the line, or because he made frequent mistakes in his notes, or in transcribing them into the copy which we now have, we do not know

and there is no way of determining. But that the copy of the notes which we now have is inaccurate, we do know.

Mr. Kirkpatrick, a witness for the Government, who attempted to retrace the traverse, says he "could not follow Means' courses and remain in what would be the natural course of the survey down the canyon. It appeared to witness that Means had made many mistakes or had adjusted his courses and distances so witness abandoned the line" (R., p. 30). And later on the same page he states that it was apparent to him that Means did not run on the courses stated in his field notes. The same conclusion was reached by Jones (R., p. 44).

The Means traverse from Upper Mora to the Estillero, as we have it today, is confessedly not the result of an actual survey, but of a computation made from other lines of which we have no record. Means' own statement regarding it to the effect that he ran the line which, with the other portion of the traverse, made a total distance of more than 23 miles, all in one day, over a rough and mountainous country, at some points reaching a height of over 10,000 feet, is the statement of a manifest impossibility. At least it was then and is now an impossibility for any man to run such a line for such a distance with anything like accuracy. The inherent facts with regard to the traverse line and Means' own statement themselves are the refutation of its reliability. A mathematical computation made from an erroneous basis must result in an erroneous conclusion. These facts alone are sufficient to justify the court in disregarding the traverse line entirely.

The only attempt made by any of the witnesses who testified in this case actually to reconstruct in an intelligent

manner the work done by Thomas Means was that made by Vincent K. Jones. His testimony was not introduced primarily for the purpose of supporting the Walker line, for it all refers to matters not contained in the patent and therefore, in our view of the case, not properly cognizable in reaching a decision. But on the trial of the case, the Government was allowed to attack the location of the Walker line by showing that it did not correspond with the distance given by Means from Upper Mora. To rebut this, appellees proved by the testimony of Mr. Jones that the Means traverse, corrected so as to conform to natural objects which he calls for on his line, does reach approximately the monuments which he set on the Pueblo River. The other surveyors who tried to retrace the traverse commenced at the point known as MC 13, although they were unable to find the monument which should have been there and consequently this point was necessarily indefinite, and although it is many miles away from the Estillero which they were attempting to relocate. Mr. Jones adopted (R., pp. 40, 41) a much more reasonable course. He took for his starting point the last fixed point on the line, the nearest fixed point to the Estillero, the court house in the Town of Mora (R., p. 96). If the Estillero is to be determined by courses and distances from any point, it would seem to be common sense to refer it to the nearest known point, and in this respect surveying rules and common sense seem to agree. Means, in his field notes of the traverse line states that at a certain point he was at a distance of 155 chains, or about 2 miles, from the court house in Mora, which bore south 50¾ degrees east. It is true that the court house is not on the line; but it is nevertheless a point to which the line was tied; and as to its being a "fixed" point, it may be

stated that the building which was there in 1861 still st
The point on Means' line which is at the required dis
and on the specified course from the court house is easi
certainable. It is this point which Mr. Jones took in h
tempt to relocate the Estillero according to the Means
notes of his traverse line.

Means states that at a certain point on his twelfth co
run July 31, 1861 (R., p. 96), the court house in the
of Mora was south 64 degrees west a certain distance and
from such point on his twelfth course he ran north 80¾
grees west, crossing the Mora River at 21½ chains.
Jones, after establishing the beginning point, ran out t
two courses as called for and found that instead of bei
the Mora River he was on top of a mesa about two miles
from the river and six or eight hundred feet above it (R
40). He therefore concluded that there must be some
in one or both of these courses. Furthermore, the Estil
which Means was then attempting to reach, lay in a ge
northwest direction from the point where he was then st
ing and there was no reason why in attempting to go to
should run southwest instead of northwest (R., p. 40).
Jones concluded that the probable error was in writing
degrees and in giving this course as southwest instea
northwest. He, therefore, ran the first course northwe
degrees instead of southwest 64 degrees, ran out the se
course as called for by Means, and found that in this wa
crossed the Mora River at the point stated by Means.
practice of thus changing courses and distances to con
to natural objects is a common one and was adopted at va
times by the several surveyors who testified in this case
pp. 13, 20, 41). From the crossing of the Mora Riv

thus determined, Mr. Jones ran out the Means traverse absolutely in accordance with his field notes, making no variation whatever from them (R., p. 41), and found that his line struck the settlement of Canoncito at approximately the place designated by Means as Upper Mora. From Canoncito he continued the traverse in accordance with Means' field notes and found that it terminated within ten chains of the actual location of the EO stone at the Estillero in the Valley of the Pueblo River (R., p. 41).

The map prepared by Mr. Jones showing the traverse run out in accordance with the field notes of Means, without change, and also showing the same line run out with the change of one course so as to conform to the crossing of the Mora River is in the record at page 153, as Exhibit G. It also shows the relations of these lines to the topography of that section of the country. From it, as well as from the testimony, it will be seen that the settlement of Canoncito checks with the location of the place which Means calls Upper Mora, and if the identity of these two places be assumed, the EO stone is again in its proper location according to the Means traverse.

The various surveyors who have attempted to reconstruct the Upper Mora-Estillero traverse on behalf of the United States have agreed in taking the town of Cleveland as their starting point, they assuming that it is the Upper Mora called for by Means; and appellant in its brief (p. 17) goes the length of saying that Upper Mora "has been identified as the present town of Cleveland." These are pure assumptions. While it is true, according to the testimony of certain witnesses for appellant, that the present town of Cleveland was known as Upper Mora, it is equally true, according

to the testimony of the same witnesses, that this name wa applied to all the upper portion of the Mora Valley, whic included the Town of Canoncito, as well as Cleveland, with out discrimination as to any particular settlement therei (R., p. 33). There is no reason whatever for assuming that the present town of Cleveland is the old town of Upper Mora that does not apply equally to the present town o Canoncito. The town of Cleveland is not on the course nor at the distance called for by Means from the court house in Mora, whether that course and distance be shown accord ing to the actual condition of those field notes or whether they be corrected in accordance with Mr. Jones' reconstruc tion of them. A line run according to the actual field notes misses the town of Cleveland by a considerable dis tance (Exhibit G, p. 153). *The town of Canoncito is on the Means course, as reconstructed by Jones, and at the distance stated by Means between Upper Mora and the stone which he set. Cleveland is not on that course nor at that distance.* There is no excuse for taking the town of Cleve land for the starting point for this traverse and no reason for so doing. Upon this feature of the case, the district court said:

> "The evidence as to the present location of Upper Mora is unsatisfactory. I cannot say from this evi dence that the present town of Cleveland is what was known in 1861 as Upper Mora. The only conclu sion to be reached from the evidence on this point is that all of the upper valley was known as Upper Mora in which there were several small settlements. Tak ing Means last bearing for a permanent object before reaching what he called Upper Mora, a tie on the course was made to the old court house in Lower

Mora, which is now standing, and which he reports as bearing S. 50¾ E. and distant 155 chains.

"The evidence shows after locating this point, at which he tied to the old court house in Mora on the course on the ground and following the courses and distances given by Means by changing his course from southwest to northwest, 'S. 64 degrees W. 206.25 chains,' changing 64 degrees to 46 degrees, following this changed course they ran through the little town of Canocito, which is probably the place that Means designated as Upper Mora.

"A line running from Canoncito for the distance and on the course given by Means in his field notes from Canoncito to the Estillero monument will reach a point within 10 chains of the present location of the Estillero monument. A line run from Canoncito to the Estillero monument on the course given by Means in his field notes passes over mountains and country which in the greater part corresponds to the topography of the country which Means states he ran over between these two points" (R., p. 62).

While we still insist that the Upper Mora-Estillero traverse is not a proper matter to be considered in determining the west boundary of the Mora Grant, it is demonstrated that if considered it works for and not against the acceptance of the line drawn through the marked stones in the Estillero. By no possible stretching of construction can it be made to conform in any respect whatsoever to the Compton line, as claimed by the United States, or to any point on it.

IV.

THE TRIAL COURT DID NOT COMMIT ERROR IN LIMITIN THE EFFECT OF THE PLATS AND FIELD NOTES OF OFFICIA SURVEYS OF TOWNSHIPS ADJOINING THE MORA GRANT, NO IN EXCLUDING LAND DECISIONS AS TO THE LOCATION OF TH MORA-GRANT BOUNDARY.

As has already been stated, Compton in running his lin was not attempting to re-establish the grant boundary. H was retracing the east boundary of certain fractional town ships which were supposed to close on the grant. He tes tified that in running this line he found various section corners and witness trees. Counsel for plaintiff then offered the field notes of the township surveys which the witness said he was attempting to follow. They were admitted for the purpose of showing that the Compton line coincided with the lines as fixed by former township surveys, so that the existence of these surveys was before the court. It is apparently the contention of appellant (Brief, pp. 12, 15) that they were also admissible to show that the Interior Department in the survey of its adjoining land, independent and apart from the survey on which the Mora Grant patent was based, and made long afterwards, conclusively fixed the boundary line between its lands and its neighbor's and no judicial review of its action is possible. In the same way they argue that the court should have received the decisions of the Interior Department as to the location of the boundary. Cases are cited to the effect that the power to make and correct surveys of public lands belongs to the political department of the Government. That is, of course, true so long

as they are public lands; but when the Government has once parted with title and the land is in private ownership, its power over the question of boundary ceases and the location of the dividing line between the public domain and the lands of the private citizen immediately becomes a judicial one. Individual and vested rights having come into existence, they must be determined by the proper tribunals; they cannot be destroyed by the arbitrary action of an interested administrative department. The views of the Secretary of the Interior as to the proper location of this line are of no evidentiary value and have no probative effect before a court. "As the United States already had conveyed the lands it had no jurisdiction to muddle with them in the form of a second survey." *Kean v. Calumet Canal Co.*, 190 U. S., 452, at p. 461.

The latest case on this subject is *Lane v. Darlington*, 249 U. S., 331, in which the right of the United States to make new surveys and their effect when made, is defined as follows:

> "So long as the United States has not conveyed its land, it is entitled to survey and resurvey what it owns, and to establish and re-establish boundaries, as well one boundary as another, the only limit being that what it thus does for its own information cannot affect the rights of owners on the other side of the line already existing in theory of law. If, as the result of the survey adopted, the United States should give patents for land thought by the plaintiffs to belong to them, 'the courts can then, in the appropriate proceeding, determine who has the better title or right.'"

V.

THAT THE COURTS HAVE NEITHER ORIGINAL POWER NO POWER CONCURRENTLY WITH THE LAND DEPARTMENT T CORRECT SURVEYS, IS AN ELEMENTARY PRINCIPLE OF OU LAND LAW.

Beginning at page 23 of its brief, the appellant injec another suggestion into this case. Upon the assumption that the Means survey has been discredited and that thi court may so consider it, the suggestion is made that th court now order a new survey to be made in accordance wit the plat and field notes, provided the court is not satisfie with the Compton survey.

There are obviously three infirmities in this suggestion each of which is fatal. The issues were made up and th case has been thus far tried upon appellant's assertion tha the patented west boundary is correctly represented by th Compton survey, and that theory cannot now be controverte by appellant. Secondly, the lower courts have decided tha the boundary runs north and south through the Estiller and the marked stones therein. The ultimate query i therefore, should that decision be sustained or overthrown and not, should this court order another survey? Moreove the proposition that the courts have neither original no concurrent power with the Land Department to correct sur veys, "if not an elementary principle of our land law, i settled by such a mass of decisions of this court that its mer statement is sufficient." *Cragin v. Powell*, 128 U. S., 691 at p. 699, and cases there cited; *Stoneroad v. Stoneroad*, 15

U. S., 240, 250, 251; *Knight v. United States Land Association*, 142 U. S., 161, 176.

United States v. Redondo Development Co., 254 Fed., 656, cited by appellant is not in conflict with the principle last above mentioned. In that case the trial court refused an injunction, sought by the government, to prevent the fencing of and the cutting of timber on land between the boundary of Baca Location No. 1, a float, as marked upon the ground by government surveyors, and the boundary as shown in the official field notes and plat, which were fair on their face. The granting act, Act of June 21, 1860, c. 167, 12 Stat. 71, specified that the grant should contain 99,328.39 acres. According to the official survey and plat of 1876, it contained the specified acreage, but "it was discovered that the marks upon the ground of the survey of 1876 were grossly inaccurate;" so inaccurate that within them the grant contained nearly 10,000 acres less than the required quantity. So, said the court, it was "quite apparent that a considerable part of the exterior lines was not traversed at all by the surveyor" (p. 658). In addition to denying injunctive relief, the trial court also "permanently established defendant's survey as defining the true boundaries of the location."

The Circuit Court of Appeals affirmed that part of the decree which denied injunctive relief. As to the part establishing defendant's private survey as defining the true boundaries, the court said that, "the decree went too far. The making and correction of surveys of public lands belongs to the political department of the government" (p. 660). Accordingly, the decree was modified "so that the dismissal of the complaint upon the merits be without prejudice to the right of the government to make a correct resur-

vey by marking the true boundaries upon * * * th ground according to the selection and location, the field notes and plat of 1876, and to contain the area so specified and when so made to require the defendant to adjust it enclosure accordingly."

There was no patent involved in the case as none had ever been issued.

VI.

SUCH STATEMENTS IN APPELLANT'S BRIEF AS ARE NOT BASED ON THE RECORD WILL DOUBTLESS NOT BE GIVEN CONSIDERATION.

We hesitate to close without referring to some statements made in appellant's brief by way of what may perhaps be called non-legal argument, although if true—which we do not admit—they can have no bearing on the decision. On page 1 of the Government's brief it is said that the United States "has been in possession of the land ever since the acquisition of the Territory of New Mexico in 1848;" on page 25, it is said: "It should not be overlooked that the line run by the deputy surveyors in 1882 has been regarded as the west boundary of the grant from the time it was run until the question was agitated by the grant claimants about the year 1907, a period of some 25 years;" on the same page, and immediately following the excerpt last given, it is said that, "During all that time the land here involved was regarded as public land of the United States and administered accordingly;" on page 13, that "From the time of the public land surveys in 1882 until 1902, * * * the line run in 1882 was not questioned as the west boundary

of the grant;" and on page 26, that the grant claimants have never been in possession of the land in controversy and for twenty-five years subsequent to 1882 they set up no claim to it. Incidentally, it may also be noted that appellant bears down on the assumptions that the area surveyed by Means was in satisfaction of a "small community grant" (Brief, pp. 4, 5), and that the owners "have received an area enormously larger than that granted by the Mexican authorities, and have no cause to complain" (Brief, p. 26).

The most careful and accurate search of the proceedings in this case will disclose no vestige of proof upon which to base the statements appellant makes as to possession of the disputed strip, acquiesence in the line run in 1882, failure to question that line, or when the grant claimants first made claim to the land in controversy. The record is devoid of any such proof. There is no plea of limitations, or laches, or estoppel; and questions of possession, use or claim of right were not and could not have been raised or litigated in the lower court. Whatever efforts the grant owners may have made for years to clear the title to the property are not disclosed by the record, but its silence in that respect does not indicate that there were none. It is, of course, improper for us to state the facts. We must rest content with the suggestion that the statements referred to were made by counsel, not by witnesses or records.

As to the Means survey being in satisfaction of a "small community grant" and the grant claimants having received "an area enormously larger than that granted by the Mexican authorities," the Mexican grant was not an area grant but a grant by metes and bounds; and assuming, *arguendo* only, that the statement of appellant is true, still appellant

is without remedy; because the grant was confirmed by Congress, *Maxwell Land Grant Case*, 121 U. S., 325, 366. But this grant was segregated from the public domain and its extent ascertained by the Means survey as approved by the Land Department, *Stoneroad v. Stoneroad*, *supra*, and upon that approved survey the solemn patent of the United States, "an instrument of quiet and security," *Whitney v. Morrow*, 112 U. S., 693, 695, was issued declaring that the grant "is correctly located now so as to embrace the premises as they are surveyed and described." *Russell v. Maxwell Land Grant Co.*, *supra*. "As against the Government, this record, so long as it remains unvacated, is conclusive." *Beard v. Federy*, *supra*. It would hardly seem that the Government can now with good grace say that the owners have received more than the Mexican grant called for.

Conclusion.

In closing its brief, appellant says that, "The boundary was fixed by the public-land survey of 1882 and should not be distributed." This is a frank statement, and its meaning is clear. Since in 1882, an *ex parte* survey of adjoining public lands was made under authority of the Land Department, the door of inquiry, they say, is closed, and controverted questions are forever adjudicated, even though that survey resulted in a line which conforms to nothing found in the patent to the Mora Grant, the correctness of which patent the Government has asserted and relied upon until now. As against this, the appellees stand upon the patent issued in 1876, and demand the boundary which that patent gives.

is submitted that the decree herein is clearly right and
ld be affirmed.

Respectfully submitted,

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A. T. ROGERS, JR.,
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Solicitors for Appellees.

CEMBER, 1923.

55

UNITED STATES *v.* STATE INVESTMENT COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 195. Argued January 25, 1924.—Decided February 18, 1924.

1. The questions where the line run by a survey lies upon the ground, and whether a particular tract lies on one side of it or the other, are questions of fact, upon which this Court will accept the concurrent findings of the District Court and Circuit Court of Appeals, unless clear error is shown. P. 211.
2. The general rule is that, in matters of boundary, calls for natural objects and fixed monuments control those for distances; and calls for courses prevail over those for distances. *Id.*
3. After a tract of land has been surveyed and patented by the United States, its boundary cannot be affected, to the prejudice of the owner, by surveys and rulings of the Land Department. P. 212.

285 Fed. 128, affirmed.

Johns v. *McKibben*, 156 Ill. 71, 73; *Worthley* v. *Burbanks*, 146 Ind. 534, 539; *Merritt* v. *Westerman*, 165 Mich. 535; *Porter* v. *McGinnis*, 1 Pa. St. 413, 416; *Dice* v. *Brown*, 98 Ia. 297, 302; *Wallace* v. *Maxwell*, 32 N. C. 110, 113; *Twohig* v. *Leamer*, 48 Nebr. 247, 253; *Chicot Lumber Co.* v. *Dardell*, 84 Ark. 140, 143; *Davies* v. *Wickstrom*, 56 Wash. 154, 161; *Ford* v. *Wilson*, 35 Miss. 490, 504; *Mississippi County* v. *Vowels*, 101 Mo. 225, 228; *Toltec Ranch Co.* v. *Babcock*, 24 Utah, 183, 191; *Stevens* v. *Pedregon* (Tex. Civ. App.) 140 S. W. 236, 239; *Richbourg* v. *Rose*, 53 Fla. 173, 193; *Finlay* v. *Cook*, 54 Barb. (N. Y.) 9, 22; *King* v. *See*, 27 Ky. L. Rep. 1011; *Foulke* v. *Bond*, 41 N. J. L. 527, 550.

APPEAL from a decree of the Circuit Court of Appeals affirming a decree of the District Court for the defendants in a suit by the United States to quiet title to land.

Mr. S. W. Williams, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

The court erred in refusing to admit in evidence the plats and field notes showing the closing of the public land surveys on the west boundary of the grant and also in refusing to admit the decisions of the Land Department, holding that the west boundary of the grant was along the line run by surveyor Compton.

The power to make and correct surveys of public lands belongs to the political department of the Government and not to the judicial. *Cragin* v. *Powell*, 128 U. S. 691; *Kirwan* v. *Murphy*, 189 U. S. 35. Therefore, the survey of 1882 was admissible on the trial of this cause in 1918 as an archive of the General Land Office, if upon no other ground. *Ayers* v. *Watson*, 137 U. S. 584.

It is stipulated that the Walker survey was not approved by the Interior Department. His location of the Means line was never adopted by the Department, but the latter accepted the Compton survey as the west boundary of the grant. The plaintiff was clearly entitled to show what the Secretary of the Interior had decided on this question.

The Walker line must be rejected because it was not accepted or approved by the Land Department and because the stones found by Walker do not answer either the calls of the patent or the calls of the grant.

Means' survey was so erroneous as to be fraudulent; indeed, it was no survey at all and is not binding upon the Government. It follows therefore, that if the court is not satisfied with the Compton survey it should order a new survey by the Land Department.

The line run by the deputy surveyors in 1882 has been regarded as the west boundary of the grant from the time it was run until the question was agitated by the grant claimants about the year 1907, a period of some 25 years. During all that time the land here involved was regarded as public land of the United States and administered accordingly. When the questi . was raised by the grant claimants, the Interior De .. .men' adhered to this line and refused to change it.

It was held in *Iowa* v. *Carr*, 191 Fed. 257, that possession was *prima facie* evidence of title to real estate. Where the lands of respective owners adjoin, and for many years one, with the silent acquiescence of the other, has had possession and occupation to a certain line between them claiming title, these facts constitute strong evidence of the correctness of the line, and that line should be taken as the correct line in the absence of persuasive countervailing evidence. See also *United States* v. *Stone*, 2 Wall. 525, 537; *Virginia* v. *Tennessee*, 148 U. S. 503.

The grant claimants have no equities to be considered. They have never been in possession of the land in controversy; and for 25 years after the public land surveys were closed upon the west boundary in 1882 they set up no claim to it. They have received an area enormously larger than that granted by the Mexican authorities, and have no cause to complain. The boundary was fixed by the public land survey of 1882 and should not be disturbed.

Mr. A. T. Rogers, Jr., with whom *Mr. Herbert W. Clark* and *Mr. Chas. W. G. Ward* were on the brief, for appellees.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This is a suit in equity brought by the United States in the Federal District Court for New Mexico to quiet title

to a large strip of land claimed as part of the public lands. The defendants claim title under the "Mora Grant", which was segregated from the public domain by a patent issued in 1876. The United States does not challenge the validity of the grant, and admits that the west boundary of the grant is the east line of the public lands. The sole question is whether the strip of land in dispute lies within the limits of the grant.[1] This depends entirely upon the location of the west boundary of the grant.

The Mora Grant was originally a community grant made by the Republic of Mexico in 1835. The west boundary was described as "the Estillero." After the cession to the United States by the treaty of Guadalupe Hidalgo, the claim under this grant was confirmed by Congress by the Act of June 21, 1860, c. 167, 12 Stat. 71. The grant was surveyed, in 1861, by Thomas Means, a Deputy United States Surveyor, under instructions of the United States Surveyor General for New Mexico. The patent, after setting forth the descriptive notes of Means' survey, authenticated by the Surveyor General, granted to the patentees "the tract of land embraced and described in the foregoing survey," covering an area of more than 800,000 acres.[2]

The survey describes the west boundary as a line more than thirty-three miles long, running south from the northwest corner, a point "inaccessible in the mountain and not set": passing successively, at given distances, a large stone marked W.B.M.G. and EO., with given bearings to aspen and pine trees marked W.B.M.G., and Estillero and a stone marked W.B.M.G.; a trail to Picuris; the Pueblo river; and a large stone at the foot of a high mountain, marked W.B.M.G.; and ending at a large stone on the bank of the Sapello river, marked S.W.C.M.G.

[1] The parties stipulated at the hearing that title to the land in dispute is either in the United States or in the defendants.

[2] With certain exceptions and reservations which are not here material.

The defendants contend that the west boundary as surveyed by Means is a north and south line passing through "the Estillero", and now established by stones marked by Means and by the natural objects called for in the survey. The Government contends that it is located more than three miles farther east, as established by a survey made for the Government by one Compton in 1909.

The District Judge, in an opinion reviewing the evidence, found that "the Estillero," at which Means was instructed to establish the west boundary of the grant, is a place in the valley of the Pueblo river; that no monuments were found on or near the so-called Compton line; and that the west boundary "being established from the evidence on the ground, that is, natural objects—the Estillero, the trail to Picuris, and Pueblo River, and the permanent monuments, stone marked EO on one side and W.B.M.G. on the other, stone marked W.B.M.G. and stone south of the Pueblo River marked W.B.M.G., all now being located in the relative positions called for in the patent, these calls for natural objects and permanent monuments on the ground definitely located" must control. He therefore concluded that the west boundary of the grant is a north and south line drawn through the monuments set by Means in 1861 at the Estillero on the Pueblo river and now in place on the ground; and that the United States by the patent had conveyed the land lying east of this line and has no title thereto. A decree was accordingly entered in favor of the defendants; quieting their title to the land in dispute against any adverse claim of the United States.[3]

On an appeal taken by the United States, the Circuit Court of Appeals, again reviewing the evidence, concurred in the finding of the District Court as to the location of the Estillero; found that the so-called Compton line ran about three miles east of the monuments at the

[3] This relief was prayed in the defendants' answer.

Estillero, did not cross the Pueblo river, and was "without support;" and held that the west boundary of the grant is "the north and south line through Means' monuments at the Estillero," as had been found by the District Court. The decree of that court was accordingly affirmed. 285 Fed. 128.

1. The questions where the line run by a survey lies on the ground, and whether any particular tract is on one side or the other of that line, are questions of fact. *Russell* v. *Land Grant Co.*, 158 U. S. 253, 259. In the present case both the District Court and the Circuit Court of Appeals have found, from the evidence, that the west line of Means' survey lies upon the ground in the location claimed by the defendants, and that the land in dispute is east of that line and within the boundary of the grant. Under the well settled rule these concurrent findings on questions of fact will be accepted by this Court unless clear error is shown. *Wright-Blodgett Co.* v. *United States*, 236 U. S. 397, 402; *Bodkin* v. *Edwards*, 255 U. S. 221, 223; *Brewer Oil Co.* v. *United States*, 260 U. S. 77, 86. An examination of the evidence—which need not be recited here—discloses no such error; and, on the contrary, leads us to the conclusion that the findings of the lower courts are in accordance with the greater weight of the testimony.

2. These findings, although extending the lines of the grant farther west and south than the distances called for in the survey, do not involve any erroneous application of the law. The west line of the grant was correctly located by reference to the Estillero, the marked stones and the natural objects called for. The general rule is that in matters of boundaries calls for natural objects and fixed monuments control those for distances. *Newsom* v. *Pryor*, 7 Wheat. 7, 9; *Higueras* v. *United States*, 5 Wall. 827, 835; *Security Land Co.* v. *Burns*, 193 U. S. 167, 179; *Silver King Co.* v. *Conkling Co.*, 255 U. S. 151, 161; *Wat-*

kins v. *King* (C. C. A.) 118 Fed. 524, 536; *United States* v. *Development Co.* (C. C. A.) 254 Fed. 656, 658. And calls for courses likewise prevail over those for distances. *Ewart* v. *Squire* (C. C. A.) 239 Fed. 34, 36. No ground appears here for any exception to these rules.

3. The District Court did not err in refusing to admit public land surveys made in 1882 as evidence showing the closing of such surveys on the west boundary of the grant, and decisions of the Land Department holding that its west boundary was along the line run by Compton. Although the power to correct surveys of the public land belongs to the political department of the Government and the Land Department has jurisdiction to decide as to such matters while the land is subject to its supervision and before it takes final action, *Cragin* v. *Powell*, 128 U. S. 691, 698; *Knight* v. *Land Association*, 142 U. S. 161, 177; *Kirwan* v. *Murphy*, 189 U. S. 35, 54, this power of supervision and correction by the Department is " subject to the necessary and decided limitation " that when it has once made and approved a governmental survey of public lands, and has disposed of them, the courts may protect the private rights acquired against interference by corrective surveys subsequently made by the Department. *Cragin* v. *Powell, supra*, p. 699. A resurvey by the United States after the issuance of a patent does not affect the rights of the patentee; the Government, after conveyance of the lands, having " no jurisdiction to intermeddle with them in the form of a second survey." *Kean* v. *Canal Co.*, 190 U. S. 452, 461. And although the United States, so long as it has not conveyed its land, may survey and resurvey what it owns, and establish and reëstablish boundaries, what it thus does is " for its own information " and " cannot affect the rights of owners on the other side of the line already existing." *Lane* v. *Darlington*, 249 U. S. 331, 333.

The decree of the Circuit Court of Appeals is

Affirmed.